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APPENDIX

VOLUME II

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Supreme Court of the United States

OCTOBER TERM, 1968

Nos. 798, 997

UNITED STATES,

Petitioner,

vs.

MONTGOMERY COUNTY BOARD OF EDUCATION, ET AL.

and

ADAM CARR, JR., ET AL.,

Petitioners,

vs.

MONTGOMERY COUNTY BOARD OF EDUCATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITIONS FOR CERTIORARI FILED SEPTEMBER 6, 1968
AND JANUARY 30, 1969
CERTIORARI GRANTED MARCH 3, 1969

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Order Requiring Defendants to Show Cause

(Filed April 28, 1967)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

The plaintiffs having filed on April 11, 1967, their motion asking this Court to modify its decree heretofore entered in this case so it will conform with the requirements of *United States and Linda Stout, et al.* v. *Jefferson County Board of Education, et al.*, Fifth Circuit No. 23345, Dec. 29, 1966 (adopted with modifications by the Court, sitting en banc, March 29, 1967), and seeking an order of this Court directing the defendants to show cause why they should not be required to adopt desegregation plans conforming with the standards embodied in *United States and Linda Stout, et al.* v. *Jefferson County Board of Education, et al.*, it is the

ORDER, JUDGMENT and DECREE of this Court that the defendants, Montgomery County Board of Education, James W. Rutland, Jr., Fred Bear, George C. Starke, George A. Dozier, Dr. J. Edward Walker, Isabelle B. Thomasson and Dr. Robert Parker, members of the Montgomery County Board of Education, and Walter McKee, Superintendent of Education of Montgomery County, Alabama, appear before this Court at 9 a.m., May 25, 1967, in the courtroom of the United States District Court for this district, to show cause, if any they have, why they should not be

ordered to adopt desegregation plans for the Montgomery County, Alabama school system that comply with the standards embodied in *United States and Linda Stout, et al.* v.

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Jefferson County Board of Education, et al., and in Exhibit "A" to this Court's decree of March 22, 1967 (the Court being composed of three judges, one of whom was the undersigned), made and entered in *Anthony T. Lee, et al.*, Plaintiffs, *United States of America*, Plaintiff-Intervenor and Amicus Curiae, v. *Macon County Board of Education, et al.*, Defendants, Civil Action No. 604-E, and why they should not be ordered to put such plans into effect in the Montgomery County, Alabama school system, commencing with the 1967-68 school year. It is further

ORDERED that the United States as *amicus curiae*, acting through its attorneys of record, appear on said date and participate in said proceedings to the extent considered necessary and appropriate. It is further

ORDERED that the Clerk of this Court attach hereto copies of the opinion and decree made and entered on March 22, 1967, in *Lee, et al., United States of America* v. *Macon County Board of Education, et al.*, Civil Action No. 604-E.

Done, this the 28th day of April, 1967.

FRANK M. JOHNSON, JR.
Chief Judge

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OPINION ANNEXED TO ORDER TO SHOW CAUSE

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

CIVIL ACTION No. 604-E

ANTHONY T. LEE and HENRY A. LEE, by Detroit Lee and Hattie M. Lee, their parents and next friends; PALMER SULLINS, JR., ALAN D. SULLINS and MARSHA MARIE SULLINS, by Palmer Sullins and Della D. Sullins, their parents and next friends; GERALD WARREN BILLES and HELOISE ELAINE BILLES, by I. V. Billes, their father and next friend; WILLIE M. JACKSON, JR., by Mabel H. Jackson, his mother and next friend; WILLIE B. WYATT, JR., and BRENDA J. WYATT, by Willie B. Wyatt and Thelma A. Wyatt, their parents and next friends; NELSON N. BOGGAN, JR., by Nelson Boggan, Sr., and Mamie Boggan, his parents and next friends; WILLIE C. JOHNSON, JR., BRENDA FAYE JOHNSON and DWIGHT W. JOHNSON, by Willie C. Johnson and Ruth Johnson, their parents and next friends, and WILLIAM H. MOORE and EDWINA M. MOORE, by L. James Moore and Edna M. Moore, their parents and next friends,

Plaintiffs,

UNITED STATES OF AMERICA,

Plaintiff-Intervenor and Amicus Curiae,

vs.

MACON COUNTY BOARD OF EDUCATION, MADISON DAVIS, Chairman; JOHN M. DAVIS, B. O. DUKES, F. E. GUTHRIE, and FRANCES (MRS. J. R.) RUSH, and C. A. PRUITT, Superintendent of Schools of Macon County, Alabama; LURLEEN BURNS WALLACE, in her capacity as Governor of the State of Alabama, and as President of Alabama State Board of Education; ALABAMA STATE BOARD OF EDUCATION; ERNEST STONE, Secretary and Executive Officer of Alabama State Board of Education; JAMES D. NETTLES, ED DANNELLY, MRS. CARL STRANG, FRED L. MERRELL, W. M. BECK, VICTOR P. POOLE, W. C. DAVIS, CECIL WORD and HAROLD C. MARTIN, as members of Alabama State Board of Education,

Defendants.

Before RIVES, *Circuit Judge,* and GROOMS and JOHNSON, *District Judges.*

PER CURIAM:

In these supplementary proceedings, this Court is once

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again called upon to consider whether the defendants[1] Lurleen Burns Wallace as Governor of the State of Ala-

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[1] Pursuant to Rule 25(d), Federal Rules of Civil Procedure, this Court on January 23, 1967, ordered that Lurleen Burns Wallace in her capacity as Governor of the State of Alabama and as President of the Alabama State Board of Education, Ernest Stone, Secretary and Executive Officer of the Alabama State Board of Education; Ed Dannelly and Mrs. Carl Strang as members of the Alabama State Board of Education, be substituted as defendants for the named defendants George C. Wallace, Austin R. Meadows, J. T. Albritton and J. P. Faulk, Jr., respectively.

bama and as President of the Alabama State Board of Education, Ernest Stone as Secretary and Executive Officer of the Alabama State Board of Education (sometimes referred to as the State Superintendent of Education), and the individual members of the Alabama State Board of Education, have continued, and are continuing, to use their authority to operate throughout the State of Alabama a dual school system based on race.

This Court is also once again called upon to pass upon the constitutional validity of a tuition grant law (Title 52, § 61(8), Code of Alabama) passed by the Legislature of the State of Alabama and approved by the Governor on September 1, 1965.

I. Procedural History

This action was commenced over four years ago by Negro parents of school-age children, against the Macon County Board of Education, seeking to desegregate the public schools in Macon County, Alabama. In July 1963 the United States was added as a party and as amicus curiae in order that the public interest in the administration of justice would be represented. After a full hearing, this Court in August 1963 made its findings and conclusions and ordered the public schools in Macon County, Alabama, desegregated. *Anthony T. Lee, et al.,* Plaintiff, *United States of America,* Plaintiff and Amicus Curiae v. *Macon County Board of Education,* MD Ala., August 22, 1963, 221 F. Supp. 297. Thereafter, on three separate occasions during the 1963-64 school year, this Court found it necessary to enjoin state officials from various forms of interference with the peaceful and orderly desegregation of schools in Macon County.[2]

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[2] *United States* v. *Wallace,* 222 F. Supp. 485 (September 1963); *Lee* v. *Macon County Board of Education,* order of February 3, 1964; *United States* v. *Rea,* 231 F. Supp. 772 (February 1964).

In February 1964 plaintiffs filed a supplemental complaint, adding as defendants George C. Wallace as President of the Alabama State Board of Education, Austin R. Meadows, Executive Officer and Secretary of the Alabama State Board of Education, and other individual members of the State Board of Education. In this supplemental complaint the plaintiffs requested this Court (1) to enjoin these defendants from operating a dual school system based upon race throughout the State of Alabama, (2) to

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enter an order requiring state-wide desegregation of schools in the State of Alabama, (3) to enjoin the use of state funds to perpetuate the dual school system, and (4) to enjoin as unconstitutional the tuition grant law of the State of Alabama (Chapter 4B [§§ 61(13) through 61(21)], Title 52, Code of Alabama). At this stage of the proceeding, the Chief Judge of the United States Court of Appeals for the Fifth Circuit, in response to a request of the district judge, constituted a three-judge court pursuant to §§ 2281 and 2284, Title 28, United States Code.

After an oral hearing, a review of the evidence and arguments of counsel, this Court in July 1964[3] made its findings and conclusions to the effect that there was a dual school system based upon race that was maintained and operated throughout the State of Alabama and that it was the policy of the state and, in particular, the Governor, George C. Wallace, as President of the Alabama State Board of Education; Austin R. Meadows, Secretary and Executive Officer of the Alabama State Board of Education, and the individual members of the Alabama State

[3] *Anthony T. Lee, et al.*, Plaintiffs, *United States of America*, Plaintiff and Amicus Curiae v. *Macon County Board of Education*, MD Ala., July 13, 1964, 231 F. Supp. 743.

Board of Education, to promote and encourage the implementation of that racial policy in the operation of the Alabama public schools. It was also concluded that Alabama's tuition grant law was nothing more than a sham established for the purpose of financing with state funds a white school system in the State of Alabama. Accordingly, the defendant state officials were enjoined from:

> Interfering with, preventing or obstructing by any means, the elimination of racial discrimination by local school officials in any school district in the State of Alabama;
>
> Approving, authorizing or paying any tuition grant or grant-in-aid under the provisions of Chapter 4B [Sections 61(13) through 61(21)] of Title 52 of the Alabama Code for the attendance of any person in a school in which enrollment or attendance is limited or restricted upon the basis of race or color;
>
> Failing, in the exercise of its control and supervision over the public schools of the State, to use such control and supervision in such a manner as to promote and encourage the elimination of racial discrimination in the public schools, rather than to prevent and discourage the elimination of such discrimination.

In August 1966 the United States of America was permitted to file a supplemental complaint in intervention wherein the United States as a party attacked the con-

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stitutionality of Alabama's new tuition grant statute[4]

[4] The 1965-66 tuition grant laws were not in the form of amendments to the old tuition grant statute; instead, they were designated as § 61(8), Title 52, Code of Alabama.

passed after this Court enjoined, in its order of July 1964, the paying of any tuition grant or grant-in-aid under the provisions of Chapter 4B, Title 52 of the Alabama Code. The complaint in intervention by the United States attacked the new statute on the basis that it was for no purpose other than to perpetuate racial segregation in the public schools of Alabama. This aspect of the case was submitted on stipulation and is discussed later in this opinion.

In September 1966 and in November 1966, the plaintiffs filed additional supplemental complaints again asking for a state-wide desegregation order and an injunction against the use of state funds to support a dual school system. Following extensive discovery by all parties, the case was heard in November 1966 and is now submitted upon the evidence and the parties' oral arguments and briefs.

II. Factual History

In the July 1964 order, this Court found that the defendant George C. Wallace, President of the Alabama State Board of Education, the State Board of Education, the several individual members thereof, and the Secretary and Executive Officer of the Alabama Board of Education, Austin R. Meadows, had demonstrated that they had enormous authority and power over the actual operation of the various local school systems throughout the state. This conclusion was based on the actual assumption or usurpation of authority by these defendants over the local school boards exemplified by their total control, when they chose to exert it, over the Macon County school system, and also by the general statutory power granted to these various officials to supervise and control the public schools in the State of Alabama. Examples of the Governor's actions and control, as found previously by this Court, are:

As stated above, acting pursuant to this Court's order, the defendant Macon County Board of Education assigned 13 Negro pupils to the Tuskegee Public High School. These pupils were assigned in grades eight through twelve and were scheduled to begin school on September 2, 1963. Early on the morning of September 2, an Alabama State trooper visited the home of Macon County Superintendent Pruitt and presented him with an order of Governor George C. Wallace, who is also under the law of Alabama the ex officio President of the Alabama State Board of Education. This Executive Order stated, in part, as follows:

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WHEREAS, there now exist in the State of Alabama conditions calculated to result in a disruption of the peace and tranquility of this State and to occasion peril to the lives and property of the citizens thereof, this situation resulting from the threat of forced and unwarranted integration of the public schools of this State; and,

* * *

NOW, THEREFORE, I, George C. Wallace, as Governor of the State of Alabama, and in conformity with the Constitutional and statutory power vested in me as Governor of said State, do hereby order and direct the Macon County Board of Education, Macon County, Alabama, to delay the opening of Tuskegee High School for a period of one week, until, to-wit: Monday, September 9, 1963, with the sole and express purpose of allowing the Governor of the State of Alabama to preserve the peace, maintain domestic

tranquility and to protect the lives and property of all citizens of the State of Alabama.

DONE this the 2nd day of September, A. D., 1963.

/s/ George C. Wallace
GEORGE C. WALLACE, AS
GOVERNOR OF THE
STATE OF ALABAMA

Acting upon this direction of Governor Wallace, the State troopers surrounded the Tuskegee High School, and neither the pupils nor teachers were permitted to enter the school. Tuskegee High School remained closed for one week. On September 9, 1963, Governor Wallace issued another Executive Order, which stated, in part:

> NOW, THEREFORE, I, George C. Wallace, as Governor of the State of Alabama, and in conformity with the Constitutional and statutory power vested in me as Governor of said State, do hereby order and direct that no student shall be permitted to integrate the public schools of the City of Tuskegee, Alabama.

Governor Wallace announced publicly that the State Legislature had provided for grants-in-aid to private schools and assured the organizers of the Macon Academy that the Macon County Board of Education would cooperate in making grants-in-aid available through the use of its statutory authority to provide such aid to students in lieu of operating a particular public school.

Examples of the actions and control of the State Board of Education and its executive officers, as previously found by this Court, are:

> In January, 1964, the Alabama State Board of Education passed the following resolution:
>
> BE IT RESOLVED That the State Board of Education hereby orders that Tuskegee High School be closed, all grades above the seventh grade, and that the teachers be transferred to other schools in the
>
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>
> Macon County School System and the children transferred to other schools in the Tuskegee area, in accordance with the State Board of Education policy of closing schools where the teacher load is not sufficient to justify paying teachers, and in accordance with Title 52, Code of Alabama, 1940, as amended; and
>
> BE IT FURTHER RESOLVED That the Alabama State Board of Education hereby orders the Macon County Board of Education to provide school bus transportation for the children attending the Shorter and Notasulga schools in Macon County.

On the same date, this resolution was wired by the State Superintendent of Education to the Macon County Superintendent of Education. In the same session, the State Board directed the Governor to take whatever steps were necessary to execute its directive to close the Tuskegee Public High School above grade seven. In compliance with the directive of the State Board, the County Board of Education closed the

Tuskegee High School effective February 3, 1964, and directed that all students then attending Tuskegee High School (12 Negro and no white students) be transferred to other schools in the "Tuskegee area." The County Board of Education further directed that the teachers of the Tuskegee High School be assigned to such other schools in the county as might be designated. The effect of the State Board's resolution facilitated the transportation of white children to the "all white" Shorter and Notasulga schools and by limiting the Negro pupils to "other schools in the Tuskegee area," required them to return to the "all Negro" Tuskegee Institute High School in Tuskegee, Alabama. When on February 3, 1964, the Negro pupils were barred from the Tuskegee High School, this Court, upon proper motion, issued a temporary restraining order, the effect of which did not require the reopening of the Tuskegee High School for the 12 Negro pupils, but ordered these Negro pupils admitted to Shorter and Notasulga on the same basis as the white pupils who were transferred from the Tuskegee High School when the Negro pupils first attended in September, 1963.

In February, 1964, the State Board of Education adopted other resolutions directing the Macon County Board to provide financial assistance under the grant-in-aid law:

> Be It Resolved That the Macon County Board of Education is directed to forthwith, February 4, 1964, provide financial assistance to parents or guardians of students under the grant-in-aid law of the State of Alabama as set forth in Title 52, of the 1940 Code of Alabama, as amended.

BE IT RESOLVED That the State Board of Education deplores the order of Judge Johnson and pledges every resource at our command to defend the people of our State against every order of the Federal courts in attempting to integrate the public schools of this State and will use every legal means at our command to defeat said integration orders and pledges our full support to the local boards of education in supporting the public school system as now

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constituted with the law, and will give every assistance possible to support every effort to maintain our way of life and high educational standards for all citizens of our State.

Based upon such findings as reflected by the evidence, this Court found that "the State of Alabama has an official policy favoring racial segregation in public education," and that, strictly in accordance with this official policy, "the State of Alabama has operated and presently operates a dual school system based upon race." In the July 1964 order, the Court further found and concluded that "the purpose of said State officials, as evidenced by their actions already recited, was clearly to prevent or impede any desegregation through their unlawful interference with the city and county school boards' attempting to comply with the law." It was only "through the exercise of considerable judicial restraint" that this Court refrained in July 1964 from requiring these defendant state officials to exercise their control and authority over the various local school boards throughout the state for the purpose of desegregating the school systems on a state-wide basis and to enjoin said defendants from using state funds for the purpose of

perpetuating a dual school system based upon race. The exercise of restraint in that instance was prompted by the desire on the part of each member of this Court to afford these defendants every opportunity to comply in good faith with their affirmative constitutional duty to desegregate the state's public schools. See *Cooper* v. *Aaron,* 358 U. S. 1 (1958). *Board of Public Instruction of Duval County, Fla.* v. *Braxton,* 326 F. 2d 616, 5th Cir. 1964, cert. denied 377 U. S. 924. We were, however, careful to admonish:

> Needless to say, it is only a question of time until such illegal and unconstitutional support of segregated school systems must cease. These State officials and the local school officials are now put on notice that within a reasonable time this Court will expect and require such support to cease. These school officials should now proceed to formulate and place into effect plans designed to make the distribution of public funds to the various schools throughout the State of Alabama only to those schools and school systems that have proceeded with "deliberate speed" in the desegregation of their schools and school systems as required by *Brown* v. *Board of Education,* supra.

III. The Merits

Over two and one-half years have now elapsed since that order was entered. During this period the focus on the rights of American citizens, regardless of their race or color—and in particular on the right of Negro children to attend public schools without discrimination on account of their race or color—has increasingly sharpened. The Congress of the United States in Public Law 88-352 (Civil

Rights Act of 1964) has declared it to be a national policy that students shall have the right to attend public schools without regard to their race, color, religion or national origin; that the term "public school" means any elementary or secondary educational institution, or any institution of higher education or any technical or vocational school above the secondary school level operated by a state, subdivision of a state, or governmental agency within a state, or operated through the use of governmental funds.[5] The Attorney General was given authority to institute suits against school systems for the purpose of furthering "the orderly achievement of desegregation in public education . . . ."[6] With the knowledge that the public school systems throughout the United States were receiving federal financial assistance in large quantities, the Congress declared, "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."[7] Negroes themselves have begun filing individual lawsuits in greater volume than ever before, for the purpose of desegregating public school facilities. These various efforts, insofar as the Alabama school system is concerned, have met the relentless opposition of these defendant state officials. Not only have these defendants, through their control and influence over the local school boards, flouted every effort to make the Fourteenth Amendment a meaningful reality

[5] Title IV, §§ 401-406.

[6] Title IV, §§ 407-410.

[7] Title VI, § 601.

to Negro school children in Alabama; they have apparently dedicated themselves and, certainly from the evidence in this case, have committed the powers and resources of their offices to the continuation of a dual public school system such as that condemned by *Brown* v. *Board of Education*, 347 U. S. 483 (1954). As a result of such efforts on the part of those charged with the duty and responsibility under the law as announced in 1954 by the Supreme Court in *Brown*, by the Congress of the United States in the Civil Rights Act of 1964, and, more specifically, by this Court in its July 1964 order, today only a very small percentage of students in Alabama are enrolled in desegregated school systems.[8] Based upon this fact and a continuation of such

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conduct on the part of these state officials as hereafter outlined, it is now evident that the reasons for this Court's reluctance to grant the relief to which these plaintiffs were clearly entitled over two years ago are no longer valid.

It is considered appropriate to restate the general scope of the control and authority of these defendant officials over the public schools in Alabama. As noted earlier, the defendant officials have extensive powers over this public school system. Section 262 of the Alabama Constitution provides that "The supervision of the public schools shall be vested in a superintendent of education, whose powers, duties . . . shall be fixed by law." The State Board of Education has similar duties: "[the Board] shall exercise, through the state superintendent of education and his pro-

[8] The percentage of students enrolled in schools in which they are in a racial minority are: White, 0.003%; Negro, 0.34%. The 1965-66 Annual Reports to the Alabama State Department of Education reflect that of the 294,734 Negro children attending public schools in Alabama only 1,009 were attending desegregated schools.

fessional assistants, general control and supervision over the public schools of the state . . . ." Title 52, §14, Code of Alabama. The Legislature has also provided that "The state superintendent of education shall execute the educational policies of the state board of education." Title 52, §45, Code of Alabama.

The State Board is expressly authorized to adopt rules and regulations governing school construction, school sanitation, and physical examination of school children, and must enforce all rules relating to "school health, compulsory education, and child conservation." Title 52, §15, Code of Alabama. It controls the grading and standardizing of public schools,[9] the minimum contents of courses of study,[10] and the training and certification of teachers.[11] The State Board of Education is further charged with the duty of "equalizing the public school facilities throughout the State" and administers a fund for that purpose. Title 52, §33, Code of Alabama. The State Board and the State Superintendent together exercise a broad power of review of actions of local school boards and local superintendents in "matters relating to finance, and other matters seriously affecting the educational interest." Title 52, §§34 and 47, Code of Alabama.

The Board also has broad powers to effectuate and sup-

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plement other powers previously expressly conferred. Title 52, §31, Code of Alabama.

It was on the basis of these provisions that the Supreme Court of Alabama was able to conclude: "Every public

[9] Title 52, § 16, Code of Alabama.

[10] Title 52, § 17, Code of Alabama.

[11] Title 52, § 20, Code of Alabama.

school is a state school, created by the state, supported by the state, supervised by the state, through state-wide and local agencies, taught by teachers licensed by the state, employed by agencies of the state." *Williams, Supt. of Banks, et al.* v. *State, For Use and Benefit of Pickens County, et al.*, 230 Ala. 395, 397, 161 So. 507, 507-08 (1935).[12]

To maintain the racial characteristics of the Alabama public school system, the defendant state officials have used their power in essentially two ways. First, they have used their authority as a threat and as a means of punishment to prevent local school officials from fulfilling their constitutional obligation to desegregate schools, and, second, they have performed their own functions in such a way as to maintain and preserve the racial characteristics of the system. No useful purpose would be served by reiterating the machinations surrounding the closing of schools in Tuskegee, Alabama, and the Governor's abortive efforts to thwart the desegregation of Tuskegee High School, since this episode is adequately set out in this Court's opinion of July 1964 (231 F. Supp. 743). Such conduct, and its continuation as hereinafter found, reveals a broad spectrum of state interference with local desegregation efforts.

Title VI of the Civil Rights Act of 1964, as stated earlier, prohibits discrimination in federally assisted programs. This law became effective July 2, 1964. In December 1964 the Secretary of Health, Education and Welfare of the United States published regulations for compliance with Title VI programs administered by his department.[13] These regulations require, among other things, that any

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[12] *Accord: State* v. *Tuscaloosa County, et al.*, 233 Ala. 611, 172 So. 892 (1937).

[13] 45 C.F.R. 80.1-80.9.

application for federal financial assistance be accompanied by an assurance that the program will be conducted, or the facility operated, on a nondiscriminatory basis.[14]

On March 4, 1965, State Superintendent of Education Meadows submitted to the United States Commissioner of Education state-wide assurance of compliance. When Dr. Francis Keppel, United States Commissioner of Education, questioned this "assurance," the State Superintendent of Education reacted by attacking Dr. Keppel's letter through a news release to the superintendents of the local school

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systems throughout Alabama. Approximately two weeks after filing his state-wide assurance of compliance, Superintendent Meadows told the Alabama Teachers Association:

> . . . The minority race has a new junior college in Mobile and a new one is being established in Jefferson County . . .
>
> • • • • • •
>
> Every type of education facility available to the majority group in Alabama has been made available to the minority group . . .

His address ended with the following plea:

> . . . Will this Nation let Alabama continue its progress, nurture its fine culture, and further its goal of peaceful existence in the only way it knows to exist or will all of this be destroyed by outsiders who either do not understand or do not care enough for either race in Alabama?

[14] 45 C.F.R. 80.4.

In April 1965 the United States Commissioner of Education issued "guidelines" requiring the school systems to take immediate steps to desegregate students, facilities and programs.[15] Pursuant to these guidelines, a number of Alabama school districts decided to desegregate all twelve grades for the 1965-66 school year. In August 1965, and after *Singleton* v. *Jackson Municipal Separate School District,* supra, Governor George C. Wallace sent the Superintendent of each such district the following telegram:

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[15] Nothing said here should be construed, inferentially or otherwise, as a decision by this Court on the validity or invalidity of the *1966* guidelines as issued by the United States Commissioner of Education, since that question, and other related questions, is presently pending in a case styled *Alabama NAACP State Conference of Branches, et al.,* Plaintiffs, *United States of America,* Plaintiff and Amicus Curiae v. *George C. Wallace, et al.,* Defendants, being heard by a separate three-judge court in this district. *Furthermore, in this case we deal solely with constitutional requirements on the part of public officials not to discriminate on the basis of race in the operation of public schools and with constitutional requirements on the part of public officials to take affirmative action to disestablish state enforced or encouraged public school segregation and to eliminate the effects of past state enforced or encouraged racial discrimination in their activities and in their operation of the public school system in the State of Alabama.* It is felt that it is necessary, however, to discuss the conduct of some of these defendants in connection with the compliance or noncompliance of the *1965* guidelines on the part of local school officials for the purpose of demonstrating the extent of the control exercised by these state officials over the local school boards throughout the state. In this connection, it should be noted that in June 1965 the United States Court of Appeals for the Fifth Circuit recognized the guidelines, as then issued (1965 guidelines), as "standards for compliance with the requirements of Title VI of the Civil Rights Act of 1964." *Singleton* v. *Jackson Municipal Separate School District,* 348 F. 2d 729, 731. For the purpose of emphasis, we reiterate that in this case this Court is not concerned with the validity of any guidelines issued by the United States Commissioner of Education in either 1965 or 1966.

WE HAVE BEEN INFORMED THAT YOUR SCHOOL BOARD HAS VOLUNTARILY SUBMITTED A SO-CALLED COMPLIANCE PLAN COVERING ALL GRADES IN YOUR SCHOOL

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SYSTEM. AS YOU KNOW, WE HAVE NEVER ASKED ANY SCHOOL BOARD TO VIOLATE ANY PROVISION OF FEDERAL OR STATE LAW. IT IS OUR CONSIDERED JUDGMENT THAT ANY PLAN FOR SO-CALLED NON-DISCRIMINATION IN ALL GRADES IS BEYOND EVEN THE MINIMUM REQUIREMENTS SET BY THE U S COMMISSIONER OF EDUCATION. IN FACT, THE DEPARTMENT HAS ACCEPTED AS MINIMUM COMPLIANCE SOME PLANS COVERING ONLY FOUR GRADES. IT IS ALSO READILY APPARENT THAT THOSE SCHOOL SYSTEMS WHICH HAVE BEEN REQUIRED TO DESEGREGATE UNDER FEDERAL COURT ORDER ARE NOT REQUIRED TO DESEGREGATE ALL 12 GRADES IN ONE YEAR. WE THINK IT WOULD BE ADVISABLE FOR YOUR SCHOOL BOARD TO RECONSIDER YOUR ACTION IN THE SUBMISSION OF YOUR COMPLIANCE PLAN.

On September 3, 1965, the Governor sent them another telegram:

THIS FOLLOW-UP TELEGRAM COMES AFTER A MEETING OF THE STATE BOARD OF EDUCATION WHICH PASSED A RESOLUTION YESTERDAY EXPRESSING GRAVE CONCERN ABOUT THE FUTURE OF PUBLIC EDUCATION

IN ALABAMA IN VIEW OF THE FACT THAT SOME SCHOOL BOARDS HAVE GONE BEYOND THE MAXIMUM REQUIREMENTS OF COURT PRECEDENTS IN EXECUTING COMPLIANCE PLANS. WE AGAIN RESPECTFULLY CALL TO YOUR ATTENTION THAT THE EXECUTION AND ADMINISTRATION OF PLANS BEYOND THOSE REQUIRED IS NOT IN THE INTEREST OF PUBLIC EDUCATION IN THE STATE OF ALABAMA. SUCH WAS ENUNCIATED BY THE SOUTHERN GOVERNORS MEETING IN ATLANTA. IN VIEW OF THE FACT THAT UNDER THE PUPIL PLACEMENT ACT THE ADMINISTRATION AND ASSIGNMENT OF PUPILS IS YOUR PREROGATIVE, WE AGAIN RESPECTFULLY REQUEST THAT YOU TAKE WHATEVER ACTION IS NECESSARY TO SEE THAT THE ADMINISTRATION AND EXECUTION OF THESE PLANS DO NOT GO BEYOND THE REQUIREMENTS OF FEDERAL COURT ORDERS OF FIVE GRADES. WE URGE CAREFUL CONSIDERATION OF THE RESOLUTION PASSED UNANIMOUSLY BY THE STATE BOARD OF EDUCATION, A COPY OF WHICH WILL BE FORWARDED TO YOU AND WHICH WE WHOLEHEARTEDLY ENDORSE. WE COMMEND THE DILIGENT WORK OF THE GREAT MAJORITY OF LOCAL SCHOOL BOARDS WHO HAVE DONE AN OUTSTANDING JOB UNDER EXTREMELY TRYING CIRCUMSTANCES.

On September 3, 1965, Superintendent of Education Meadows sent the local school officials a copy of a resolu-

tion by the State Board of Education urging them "to take no action in the administration and execution of compliance plans which are not required by law or court order . . . ." Superintendent Allen Thornton of Lauderdale County, who had attempted to justify his board's actions to the Governor, received the following telegram from the Governor:

> YOUR STATEMENT TO THE GOVERNORS OFFICE ON THURSDAY SEPTEMBER 2 THAT YOU ARE SATISFIED WITH THE PUBLIC SCHOOL SITUATION IN LAUDERDALE COUNTY WHERE MORE NEGRO PUPILS ARE ENROLLED IN THE PREVIOUSLY ALL WHITE SCHOOLS THAN ARE IN EITHER OF THE LARGE CITIES OF BIRMINGHAM OR MONTGOMERY, AND YOUR FURTHER STATEMENT THAT YOU PLAN TO ELIMINATE EVENTUALLY ALL NEGRO SCHOOLS IN THE COUNTY AND TRANSFER THE PUPILS TO WHITE SCHOOLS COULD DO MORE TO DESTROY THE PUBLIC EDUCATIONAL SYSTEM OF ALABAMA THAN ANY ACTION SINCE THE INFAMOUS 1954 DECISION OF THE UNITED STATES SUPREME COURT. THOSE WHO HAVE WORKED DILIGENTLY TO RAISE SUPPORT OF PUBLIC EDUCATION TO
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> A RECORD HIGH LEVEL IN THE HISTORY OF OUR STATE RESENT AND REJECT THIS ATTITUDE. WE CALL UPON YOU TO ALIGN YOUR POLICIES WITH THE MINIMUM REQUIREMENTS OF THE LAW AND OF COURT ORDERS. (COPIES OF THIS TELEGRAM SENT TO FLOR-

ENCE TIMES, FLORENCE, ALA. ASSOCIATED PRESS, MONTGOMERY, ALA., AND UNITED PRESS INTERNATIONAL, MONTGOMERY, ALABAMA)

These telegrams had their effect. For instance, on September 6, 1965, the Choctaw County Board of Education resolved:

> That due to the change in conditions, particularly within the past few days, the Board concludes it is for the best interest of the children attending the schools of Choctaw County, Alabama, their safety and welfare, for the continued orderly operation of the schools in the County, and for the prevention of violence which would likely result in serious consequences adversely affecting the orderly operation of the schools, the plan of desegregation of the schools of Choctaw County, Alabama, adopted by this Board on August 23, 1965, be and the same is hereby revoked.

The reaction of these defendant state officials and their conduct and the responses by the local school officials concerning the 1966 guidelines issued on March 7, 1966, by the United States Department of Health, Education and Welfare, for the reasons set forth by this Court in footnote 15, supra, will not be made a part of the findings and conclusions of this Court in this case.

Conduct on the part of these state officials to thwart desegregation of the public school system in the state continued, and on July 1, 1966, Alabama State Superintendent of Education Meadows expressed his views on segregation

in a parable which he circulated to each local superintendent of education throughout the State of Alabama,[16]

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In August 1966 the Tuscaloosa County School Board formally assigned two Negro teachers to two predominantly white schools and four white teachers to two Negro schools. Shortly after school opened in Tuscaloosa County and these assignments became known, the State Superintendent of Education telephoned the Tuscaloosa County Superintendent of Education, Dr. W. W. Elliott, and recommended that the two Negro teachers who had been assigned to predominantly white schools be transferred to

[16] " 'Segregation' is a perfectly good word. It has been practiced down through the ages for good results. The Lord set aside or segregated fruit from the apple tree in the Garden of Eden from Adam and Eve, but Eve persuaded Adam to taste the fruit and they were both banished from the Garden of Eden and honest men and women have had to work for their living ever since.

"Segregation has been used by people of the civilized world for man's greatest advancement. Matrimony, the most sacred of all bonds for men and women, is the highest type of segregation In matrimony, husband and wife bind themselves to cleave to one another, even to the extent of forsaking all others if necessary. A great ministerial commandment has been the public pronouncement at the wedding ceremony 'What God has joined together let no man put asunder.' Without this bond of segregation, there would be no family unit. One of the Ten Commandments forbids breaking this human bond of segregation. Segregation is the basic principle of culture. The good join together to segregate themselves from the bad.

"Segregation is one of the principles of survival throughout the animal kingdom. Animals, in many instances, join their own kind to defend themselves by numbers against other animals that would destroy them without such segregated bond. Birds of a feather truly flock together. Wild geese fly across this continent in 'V' formation, but they never join any other flock of birds. Wild duck fly together and not with other birds. The wild eagle mates with with another eagle and not with any other bird. Red birds mate with red birds, the beautiful blue birds mate with other blue birds, and so on through bird life.

(*footnote continued on next page*)

other schools. Dr. Meadows advised the local school official that he was calling as a constitutional officer of the State of Alabama and that the assignment of Negro teachers to white schools was "against the law" and "public policy" of the state. A few days later Governor George C. Wallace, in a press conference, announced that he would use the police power of the state to maintain peace and requested that the two Negro teachers be removed and reassigned forthwith. Later, still in September 1966, State Superintendent Meadows again endeavored to persuade the Tuscaloosa County Superintendent of Education to reassign the Negro teachers. About the same time, Attorney Hugh Maddox, Legal Adviser to the Governor, telephoned the Tuscaloosa County Superintendent and informed him that, "It [is] the public policy of the State that Negro teachers not teach white children" and that the Governor would use his police power to enforce the law. Dr. Elliott insisted that these Negro teachers were fully qualified and did not agree to reassign them. On October 17, 1966, the defendant Meadows, again by telephone, advised Dr. Elliott that the Governor suggested that two additional teacher units be allotted to the Tuscaloosa County school system provided the students being taught in white schools by the two Negro teachers were allowed the freedom to choose a white teacher. The State Board of Education

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"There can be segregation without immoral discrimination against anyone. Integration of all human life and integration of all animal life would destroy humanity and would destroy the animal kingdom. A time of reckoning must come in this United States of America on the fundamental principles of segregation and non-discrimination which can be achieved without destroying segregation in its true sense."

also promised funds to the Tuscaloosa County school system for additional classroom space to accommodate two additional white teachers. These state officials also made it clear that similar measures would be taken in other communities if Negro teachers were assigned to teach white students. A news release circulated by Dr. Meadows on October 25, 1966, to all city and county superintendents and to all news media was as follows:

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> In complete accord and with full approval of Governor George C. Wallace, any county or city board of education will be allocated a teacher unit and apportionment of funds therefor where such board employs a teacher for pupils to transfer from a teacher of the opposite race to a teacher of their own race by freedom of choice of such pupils and their parents. Two such teacher units have already been allocated to a county board of education in which thousands of people filed a petition for such relief, both with the county board of education and the Governor of Alabama.

The foregoing findings serve to illustrate that the actions on the part of the defendant Alabama officials have been designed to perpetuate the racially segregated public school system in the State of Alabama. These actions have been to some extent, as noted, dramatic interference with local efforts to desegregate public schools. However, the most significant action by these defendant state officials, designed to maintain the dual public school system based upon race, is found in the day-to-day performance of their duties in the general supervision and operation of the system.

A. School Construction and Consolidation

The State Board of Education and its Secretary and Executive Officer have been vested by statute with general supervisory powers over public education in Alabama. Code of Alabama, Title 52. The State Board is specifically authorized to adopt rules and regulations "for the proper construction of school buildings." Title 52, Section 15, Code of Alabama. For approximately fifty years, the State Department of Education has conducted periodic surveys of the Alabama school system. These surveys are for the purpose of enabling that department to make decisions and recommendations concerning the location, construction, consolidation, expansion and abandonment of schools and school buildings. The factual information is obtained from field inspections and relates to the distribution of student population within the school districts, the location, capacity and physical condition of school buildings, and other information concerning school sites. This information is then evaluated by the State Superintendent and the State Board of Education. Certain standards regarding the adequacy of physical structures have been established by the State Department; for instance, standards respecting the minimum size of school sites, minimum student standards, and minimum teacher standards. On the basis of the information gathered in the surveys and these standards, the survey teams make recommendations and classifications. First, they classify the school buildings as either "suitable for permanent use," "suitable for temporary use," or "should be abandoned." Second, recommendations are made concerning the consolidation of existing schools. Third, recommendations are made concerning

where new schools should be constructed or existing facilities enlarged. This information, together with the recommendations, is published by the State Department of Education in a Survey Report after the findings and recommendations are approved by the State Superintendent of Education. To a large extent, these recommendations—of necessity—are controlling upon the local school boards, since local boards that ignore them are penalized through the use of regulations that have been adopted by the State Board and through the use of other obligations such as those governing the allocations of state funds under the Minimum Program Fund[17] for teachers' salaries.

Other regulations establish a method of calculating the number of teacher units earned by and to be awarded each school. Transportation allowances to the local school districts are made in recognition of the survey recommendations, and the Survey Reports determine, to a large extent, the State Superintendent's approval or disapproval of sites for new school construction or existing school expansion. In each instance, the local school board must obtain the approval of the State Superintendent as to the location and need for expansion; the approval of the State Superintendent is also needed for construction projects, since the principal source of construction funds comes from state bond issues. The State Superintendent's approval on school construction projects is important, even where local funds are used, since local boards of education cannot issue warrants without the specific approval of the State Superintendent of Education. Title 52, Code of Alabama, §§ 216-218, 235 (4). Furthermore, the Governor and the State Superintendent of Education constitute a majority

[17] Title 52, §§ 208-215, Code of Alabama.

of the Public School and College Authority. This agency has the power to establish priorities for projects and to make funds more readily available to local school systems.

The evidence in this case is absolutely overwhelming that the State Board of Education and the Alabama Superintendent of Education, with the assistance of their staff in the State Department of Education, have exercised extensive control over school construction and consolidation in such a manner as to perpetuate a dual public school system based upon race and to interfere with the orderly desegregation of the public schools in the State of Alabama. This discriminatory course of conduct on the part of these defendants has continued and persisted since this Court's order of July 1964, for instance, the interference of State Superintendent Meadows and the Governor with the Tuscaloosa County Board of Education and their offer

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to that local board regarding construction funds. Such an offer could have been for no purpose other than to thwart the efforts of that local board to desegregate the faculties of its schools. Furthermore, the use of that authority and control on the part of these defendants over school construction has not been confined to manipulating the availability of funds. For instance, a more insidious method of control over local boards for the purpose of perpetuating a dual public school system based upon race has been with respect to school construction and consolidation. This is found in the judgments and recommendations contained in the school surveys. The survey recommendations regarding consolidation strictly observe the racially segregated character of the schools. In Calhoun County—to take but one example—rather than recommend that the local board close down an inferior Negro school

(Hawkins) and consolidate it with a nearby white school (Bynum), the survey recommended, instead, that the Negro students from the Hawkins School be transported across the county to Calhoun County Training School, a Negro school. Not only was the Calhoun County Training School a greater distance from Hawkins, which necessitated busing for the purpose of maintaining segregation, but, compared to Bynum, the physical facilities were significantly inferior and less room was available for the Negro students who were bused from Hawkins. The Survey Report that was then in existence reflected that the Calhoun County Training School to which the Hawkins Negro students were transported "is located on an inadequate site about which little can be done." Such a method of consolidation was for no purpose other than to perpetuate segregation of the races in that public school system.

The survey teams have also sought to perpetuate the dual public school system by refusing to recommend consolidation where consolidation would have had the effect of desegregating. These reports reflect that the survey teams consistently compromised the minimum student standards in order to maintain segregation of the students. Such a course of conduct is condemning evidence that the defendants have sought to perpetuate and, through this means, have effectively perpetuated the dual public school system.

In yet another area, the state survey recommendations pertaining to the location of new schools have been designed to perpetuate the dual system. Considerations of economy, convenience and education have been subordinated to the policy of ra[illegible]paration; survey reports of construction sites reflect this policy. A striking instance of this discriminatory conduct is found in the Clarke

County survey conducted during the 1964-65 school year. At the time of the survey, there were twenty-three schools

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in the system attended by approximately 5800 students—2400 white and 3400 Negro. Consolidation was clearly called for; yet the survey staff sought to perpetuate the segregated system by recommending and approving that, in each of the three principal towns of the county, two separate schools be maintained as permanent school installations, each covering grades 1-12. This recommendation in each of these three towns in Clarke County, Alabama, can be explained only in racial terms. Other similar numerous examples have been presented, the discussion of which would serve no useful purpose.

Furthermore, through the control of finances in school construction, these defendants have insured that Negro children are provided with markedly inferior educational opportunities. For example, the average pupil-teacher ratio in the Negro schools is higher than in the white schools; the per-pupil valuation of school buildings and contents is $607.12 per white pupil as compared to $295.40 per Negro pupil. Over 25% of the Negro high schools in Alabama are unaccredited as compared with only 3.4% of white high schools.

B. Faculty and Staff

It is no longer open to question that faculty and staff desegregation is an integral part of any public school desegregation plan—not because of teachers' employment rights, but because students are entitled to a nonracial education, and assignment of teachers to students on the basis of race denies students that right. See *Bradley* v.

School Board of Richmond, 382 U.S. 103 (1965); *Rogers* v. *Paul*, 382 U.S. 198 (1965); *Kemp* v. *Beasley*, 352 F. 2d 14 (8th Cir. 1965); *Singleton* v. *Jackson Municipal Separate School District*, 355 F. 2d 865 (5th Cir. 1966); *Wheeler* v. *Durham City Board of Education*, 363 F. 2d 738 (4th Cir. 1966); *Davis* v. *Board of School Commissioners of Mobile County*, 364 F. 2d 896 (5th Cir. 1966).

The constitutional duty to desegregate the faculties in public school systems was made clear by the Supreme Court of the United States in *Rogers* v. *Paul, supra:*

> Two theories would give students not yet in desegregated grades sufficient interest to challenge racial allocation of faculty: (1) that racial allocation of faculty denies them equality of educational opportunity without regard to segregation of pupils; and (2) that it renders inadequate an otherwise constitutional pupil desegregation plan soon to be applied to their grades.

This constitutional duty was recognized by the United States Court of Appeals for the Fifth Circuit in *Singleton* v. *Jackson Municipal Separate School District, supra,* when the Court stated:

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> . . . [W]e regard it as essential that the plan provide an adequate start toward elimination of race as a basis for the employment and allocation of teachers, administrators, and other personnel.

and again in *Davis* v. *Board of School Commissioners of Mobile County, supra,* when the Court stated:

> . . . [T]he plan must be modified in order that there be an end to the present policy of hiring and assigning teachers according to race by the time the last of the

schools are fully desegregated for the school year 1967-68.

The recent decision in *Clark* v. *Board of Education of the Little Rock School District*, 369 F. 2d 661, 669 (8th Cir., December 15, 1966), requires that specific steps must be taken now to end faculty segregation. The Court stated:

> We agree that faculty segregation encourages pupil segregation and is detrimental to achieving a constitutionally required non-racially operated school system. It is clear that the Board may not continue to operate a segregated teaching staff. . . . At this point the Board is going to have to end discriminatory practices in staff assignment and recruitment.

and, in another passage:

> [T]he Board should make all additional positive commitments necessary to bring about some measure of racial balance in the staff of the individual schools in the very near future. The age old distinction of "white schools" and "Negro schools" must be erased. The continuation of such distinctions only perpetuates inequality of educational opportunity and places in jeopardy the effective future operation of the entire "freedom of choice" type plan.

As in other areas, some of which have already been discussed, defendants have endeavored to thwart and, with considerable success, have thwarted efforts toward implementation of the constitutional requirement to eliminate faculty and staff segregation in the public school system of Alabama. The Governor's legal adviser was indeed correct when he declared that, "It [is] . . . the public policy

of the State that Negro teachers not teach white children." Evidence in this case reflects that this policy has been successful for, of over 28,000 teachers in the state, only 76 are teaching in schools to which students of the opposite race have been traditionally assigned. Defendants, through the use of pressures, some of which have herein been outlined, have required local boards to conform to their views on faculty and staff segregation in the school system. As a matter of fact, they have acted affirmatively to use the Minimum Program Fund to make segregation of the faculties and staffs in the several school districts attractive.

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For instance, as we have previously noted, the State Superintendent of Education, at the insistence of the Governor, utilized the state's power, that had been vested in these defendants, of allocation of teacher units by authorizing two additional units to be used for the purpose of hiring white replacements for the two Negro teachers hired by the Tuscaloosa County Board of Education teach in white schools.

Teacher institutes continue to be conducted separately for each race. Section 339, Title 52, Code of Alabama. Generally, the control exercised by these defendants over in-service training programs and teacher certification has been used not as a means to eliminate discrimination in the dual school system of Alabama but as an instrument to enforce segregation throughout that system.

In this area, as in other areas herein discussed, there is an affirmative duty on the part of these defendants, as well as on the part of other school officials throughout the state, to desegregate staffs and faculties. This is also a constitutional duty apart from any federal regulatory scheme.

C. TRANSPORTATION

It cannot seriously be contended that transportation is not a critical factor in the process of disestablishing the traditional dual public school system.[18]

The defendant state officials exercise considerable authority in this area since nearly 100% of the cost of local school transportation programs is paid from the state Minimum Program Fund and, further, since § 209, Title 52, Code of Alabama, empowers the State Board of Education to approve transportation routes submitted by the local boards and to establish minimum standards for the buses that are used to transport the students. This Court's finding in its July 1964 order that these defendants have used this control over transportation to perpetuate segregation is as true now as it was then. The State Board continues to finance and permit the operation of school bus systems organized on a racially discriminatory basis. The buses provided Negro children have been and continue to be of a markedly inferior quality. There is duplication and over-

lapping of bus routes in the school bus transportation

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[18] See, e.g., *Franklin* v. *Barbour County Board of Education*, 259 F. Supp. 545 (MD Ala. 1966); *Harris* v. *Crenshaw County Board of Education*, 259 F. Supp. 167 (MD Ala. 1966); *Carr* v. *Montgomery County Board of Education*, 253 F. Supp. 306 (MD Ala. 1966); *Harris* v. *Bullock County Board of Education*, 253 F. Supp. 276 (MD Ala. 1966); *United States* v. *Lowndes County Board of Education*, Civ. Action No. 2328-N, MD Ala., February 10, 1966; *Wright* v. *County School Board of Greenville County*, 252 F. Supp. 378 (ED Va. 1966); *United States* v. *North Pike Consolidated School District*, Civ. Action No. 3807, SD Miss. Sept. 25, 1965; *Baird* v. *Benton County Board of Education*, Civ. Action No. W.C. 6513, ND Miss. Aug. 3, 1965; *United States* v. *Natchez Special Municipal Separate School District*, Civ. Action No. 1120(W), SD Miss., January 28, 1966 as amended April 15, 1966; *Killingsworth* v. *Quitman Consolidated School District*, Civ. Action No. 1302(E), SD Miss., August 14, 1965.

provided in practically every area of the state to permit white children to avoid attending desegregated schools closer to their homes; further, this system has been and is being used to transport Negro children living near white schools to Negro schools miles away.

D. Trade Schools, Vocational Schools and State Colleges

The state's trade schools, vocational schools and state colleges[19] continue to be operated on a segregated basis. The operation of these systems is the immediate responsibility of the State Board of Education. See the Regional Vocational and Trade School Act of 1947, Code of Alabama, Title 52, § 451(4); the Alabama Trade School and Junior College Authority Act of 1963, Code of Alabama, Title 52, § 509(96); Code of Alabama, Title 52, §§ 451(3) and 509(85). See also Code of Alabama, Title 52, §§ 438 and 452.

There is no necessity for setting out the facts in detail concerning the operation of these state colleges since the evidence conclusively establishes—the defendants do not controvert it—that these schools have been and continue to be operated as if *Brown* v. *Board of Education* were inapplicable in these areas. For example, § 438, Title 52, Code of Alabama, reads:

> The state board of education shall have the control and management of the several teachers' colleges of the state, for white teachers, located at Florence, Jackson-

[19] The term "state college," as used herein, includes all state colleges or universities except the University of Alabama, Auburn University, University of South Alabama at Mobile, and Alabama College at Montevallo, which institutions have separate boards of trustees and are not administered by the Alabama State Board of Education.

ville, Livingston, Troy, and of the Alabama State College for Negroes located at Montgomery.

The plaintiffs are also clearly entitled to relief in this area.

It is quite clear that the defendants have abrogated, and openly continue to abrogate, their affirmative duty to effectuate the principles of *Brown* v. *Board of Education, supra.* Although the facts as herein outlined speak eloquently for themselves, there is no more clear an indication of this than Superintendent Meadows' statement that he has done nothing to eliminate segregation in the public schools of Alabama. As Judges Sobeloff and Bell stated in a concurring opinion in *Bradley* v. *School Board of the City of Richmond, Virginia,* 345 F. 2d 310, 322, 323 (4th Cir. 1965):

> *[T]he initiative in achieving desegregation of the public schools must come from the school authorities.*
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> *Affirmative action means more than telling those who have long been deprived of freedom of educational*
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> *opportunity, "You now have a choice."* [Emphasis added.]
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> It is now 1965 and high time for the court to insist that good faith compliance requires administrators of schools to proceed actively with *their* nontransferable duty to undo the segregation which both by action and inaction has been persistently perpetuated.

Accord, Cooper v. *Aaron, supra.* Such a course of conduct on the part of these defendants has served to thwart and, in many instances, defeat voluntary desegregation plans that have been attempted by the local school districts.

It should be noted that one of the most illegal methods adopted by these defendants to impede desegregation on a local level is that they have consistently attempted to obscure the fact that local school authorities have a federal constitutional duty to desegregate their school systems totally, notwithstanding whether a particular system is under a court order or whether that school system agrees to comply with the requirements of the Department of Health, Education and Welfare of the United States.

Statements to the effect that "the local school districts should go no further than ordered by the Court," and the offers to replace federal funds with state funds have been designed to lead the local school authorities to believe that they have no such affirmative duty. Such philosophy completely ignores the fact that the paramount duty to desegregate is a constitutional one independent of any court order and independent of any federal regulatory program. It is entirely disingenuous of the defendants to fail to admit that their activities were coercive and for them to contend they were, at most, acting in an advisory capacity, with the ultimate control residing with the local boards. The record presented to this Court clearly indicates that these defendants stand ready to exercise, and have in many instances in areas of public education in Alabama exercised, the same powers and control that they demonstrated two and one-half years ago over the Macon County schools when the desegregated school was closed and white students were bused to other schools in the same system that continued to operate on a segregated basis. In addition, this Court's conclusion in its July 1964 order that "The control by the State Board of Education over the local school systems is effected and rigidly maintained through control of * * * finances" has not been diminished by sub-

sequent events. On the contrary, the evidence concerning the conduct of these defendants since 1964 strengthens that conclusion. This control on the part of these defendants over the local boards is all pervasive; it invests in these defendants power over school construction and consolida-

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tion, teachers, school transportation and other vital areas in the operation of the public schools throughout the state.

IV. The Tuition Grant Statute

As observed earlier in this opinion, state and local authorities are under an affirmative constitutional duty to provide equal educational opportunities for all children by ceasing to discriminate on the basis of race and to the extent herein noted and ordered, eliminating the effects of past discrimination. To obviate the performance of this duty, a state may neither operate and maintain two school systems—one integrated, one segregated—giving public school students a choice between the two,[20] nor simply go out of the business of running schools in some school districts and allow that function to be undertaken by private persons.[21] It is also axiomatic that a state may not induce, encourage or promote private persons to accomplish what it is constitutionally forbidden to accomplish.[22]

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[20] *Boson* v. *Rippy*, 285 F. 2d 43, 45-46 (5th Cir. 1960); *Kelly* v. *Board of Education of City of Nashville*, 159 F. Supp. 272, 278 (MD Tenn. 1958).

[21] *Griffin* v. *County School Board of Prince Edward County*, 377 U.S. 218 (1964); *Lee, et al.* v. *Macon County Board of Education*, 231 F. Supp. 743 (MD Ala. 1964).

[22] See *Anderson* v. *Martin*, 375 U.S. 399 (1964). And see, *Lombard* v. *Louisiana*, 373 U.S. 267 (1963); *NAACP* v. *Alabama*, 357 U.S. 449, 463 (1958); *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715, 726-27 (1961) (Justice Stewart concurring); *Evans*

Measured against these criteria and when viewed in the context of the facts and circumstances which gave rise to its enactment, the vice of the present tuition statute[23] becomes clear: it is but another attempt of the State of Alabama to circumvent the principles of *Brown* by helping to promote and finance a private school system for white students not wishing to attend public schools also attended

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by Negroes.

Alabama's present tuition statute must be analyzed in the historical context which gave rise to its enactment. It is unmistakably clear that the concept of tuition grants to students wishing to attend private schools in Alabama was born of an effort to resist and frustrate implementation

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v. *Newton*, 382 U.S. 296, 305-307 (1965) (Justice White concurring); *Hall* v. *St. Helena Parish School Board*, 197 F. Supp. 649, 658 (ED La. 1961), aff'd per curiam, 368 U.S. 515 (1962).

[23] "Any other provisions of law notwithstanding, no child shall be compelled to attend any school when in the judgment of the parent or guardian of such child attendance in the school to which assigned will be detrimental to the physical or emotional health of such child or subject the child to hazards to personal safety. In any such case, the parent or guardian of such child shall file written objections with the local board of education and request transfer and reassignment. Upon refusal of any board to grant such a request, the child shall proceed as provided in section 61(7) of this title, or in lieu thereof, submit an application to the state board of education for a tuition grant to attend any private nonsectarian school in or outside the school attendance district in which the child resides. Tuition grants approved by the state board shall not exceed a total of one hundred eighty-five dollars ($185.00) in any one school year, or a sum to be determined by the state superintendent of education to be the cost per pupil in average daily attendance in the public schools of the state, whichever sum shall be less. The state board of education shall promulgate rules and regulations for the administration of tuition grants which shall be paid only from funds appropriated by the legislature for such purpose. It shall be unlawful for any person to use funds granted under this chapter for any purpose other than for the payment of tuition in school; * * *." Title 52, § 61(8), Code of Alabama.

of the *Brown* decision. *Lee* v. *Macon County Board of Education*, 231 F. Supp. 743 (MD Ala. 1964).[24] The first such statute, enacted in 1957, authorized tuition grants for students attending private nondenominational schools in school districts where no public school was available. Chapter 4B of Title 52, Code of Alabama, of which the 1957 tuition grant statute was a section, authorized each local board of education to discontinue operating its public school when it found that the continued operation of its public school "will be accompanied by such tensions, friction, or potential disorder or ill will within the school as substantially to impair effective standards or objectives of education of its pupils, or by potential impairment of peace, order and goodwill in the community, school district, or county involved." Acts of Alabama 1957, No. 528, § 1 at 723. It was pursuant to this chapter that the State Board of Education ordered all grades above the seventh grade in the Macon County public schools closed and directed that payment of tuition grants be made to students residing in Macon County where no public schools were available, who attended racially segregated private schools. In our July 13, 1964 order, we found that implementation of the tui-

[24] It is appropriate to reiterate our conclusions on this point made in our July 13, 1964 order: "Alabama's grant-in-aid system appears to have been first proposed by the Special Interim Committee of the Alabama Legislature in 1954. The legislative history of the statute subsequently enacted by the Alabama Legislature reflects that this Committee was formed to consider means of meeting the decision of the Supreme Court in Brown v. Board of Education, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954). The Committee's report to the Legislature set forth a number of proposals for delaying or avoiding racial desegregation in education, and it proposed a number of specific amendments to the Alabama Constitution, all of which were ultimately adopted. These grant-in-aid laws are all set out in Title 52, Code of Alabama, recompiled 1958." 231 F. Supp. at 743, n. 4.

tion grant statute was unconstitutional and enjoined its further use.

It is clear that the present tuition statute was born of the same effort to discriminate against Negroes, and was designed to fill the vacuum left by this Court's injunction against the 1957 tuition statute. Although the statute is cast in terms of making eligibility for a tuition grant turn on the parent's judgment that the child's attendance at public school will be detrimental to the child's "physical and emotional health," when read in perspective it turns eligibility for tuition on the parent's dissatisfaction with

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sending his child to a desegregated public school. Prior to 1965-66, § 61(8) said as much on its face. It authorized the parent or guardian of any child attending "any school in which the races are commingled" to terminate the child's attendance there. The amendment simply substituted for the objective test—commingling of races—the subjective test that now appears in the statute—"judgment" of the parant or guardian. Significantly, every dollar paid during the 1965-66 school year went to students enrolled in all-white private schools established when the public schools desegregated.

Finally, it is also important to emphasize that the state has failed to advance any rational basis on which to explain the statute. Eligibility for a tuition grant does not turn on the inadequacy of public educational facilities to accommodate all school-age children in the school district. The statute does not manifest state concern for equalizing the opportunity of all children, including the poor, to attend private schools, for the statute does not require a showing of financial need. Nor does the statute exhibit state concern for improving the educational opportunities of special

classes of students—those who may be gifted or those who may be handicapped. Although the statute applies only to public school pupils, it may not be invoked by pupils in public schools who wish to attend private schools for reasons such as superior instruction, smaller classes, and so forth. The statute narrows its focus on an extremely limited class of students—those students whose physical or emotional health would be adversely affected or whose safety might be jeopardized by attending public schools. Since neither of these conditions can be demonstrated to have any rational basis in fact, there can be only one way to explain the statute: it is designed to aid and assist private discrimination of the kind which would be condemned if attempted directly by the state. As such, the statute is unconstitutional.

It is appropriate to observe in concluding this aspect of the case that it is now becoming apparent that the State of Alabama is attempting to make a concerted effort to establish and support a separate and private school system for white students. Twice in less than three years this Court has had to strike down tuition grant provisions designed to achieve this end. Moreover, the Governor has officially encouraged private contributions to support the many private schools throughout the state *as alternatives to the public desegregated school system.*[25] Up to this point,

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[25] "[*Y*]*our . . . donations . . . will help people in our State who are being forced to conduct private schools because of the destruction of their public schools.*

"This group, made up of representatives of the various private schools, will see that your contribution is distributed to these schools on an equitable basis. These people—these parents—are fighting for their freedom too—a freedom that affects all of us and I hope that you will join me in helping those whose schools have been taken away from them." (Emphasis added.)

this Court has used its injunctive powers to prevent the State of Alabama from establishing a separate school system for white children. It must be made perfectly clear, however, that if the state persists in its efforts dedicated to this end, and its involvement with the private school system continues to be "significant," [26] then this "private" system will have become a state actor within the meaning of the Fourteenth Amendment and will need to be brought under this Court's state-wide desegregation order.

V. The Relief

A. General Nature

As has been outlined in some detail, the defendant state officials have engaged in a wide range of activities to maintain segregated public education throughout the State of Alabama. These activities have been concerned with and have controlled virtually every aspect of public education in the state, including site selection, construction, consolidation, assignment of teachers, allocation of funds, transportation, vocational education, and the assignment of students.

The remedy to which these plaintiffs are constitutionally entitled must be designed to reach the limits of the defendants' activities in these several areas and must be designed to require the defendants to do what they have been unwilling to do on their own—to discharge their constitutional obligation to disestablish in each of the local county and city school systems in Alabama that are not already operating under a United States court order, the

[26] *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715, 722, 81 S. Ct. 856, 6 L. Ed. 2d 45 (1961). See cases in footnote 22, *supra*. And see *Simkins* v. *Moses H. Cone Memorial Hospital*, 323 F. 2d 959 (4th Cir. 1963).

dual public school system to the extent that it is based upon race or color. In this connection, the State of Alabama and particularly the defendant state officials are under an affirmative constitutional duty to take whatever corrective action is necessary to disestablish such a system. Faculty members and staff members, facilities and activities, as well as student bodies, must be desegregated to such an extent that there no longer exists in the Alabama public school system discrimination of any sort or to any degree that is based upon race or color.

This Court can conceive of no other effective way to give the plaintiffs the relief to which they are entitled under the evidence in this case than to enter a uniform

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state-wide plan for school desegregation, made applicable to each local county and city system not already under court order to desegregate, and to require these defendants to implement it. Only in this way can uniform, expeditious and substantial progress be attained, and only in this way can the defendant state officials discharge the constitutional duty that was placed upon them twelve years ago in *Brown* v. *Board of Education, supra.* It cannot seriously be contended that the defendants do not have the authority and control necessary to accomplish this result. Certainly the possibility of losing state funds for failure to abide by and implement the minimum constitutional requirements for school desegregation which this opinion and the accompanying decree require will, without any doubt, effect compliance. Indeed, it is quite clear from the evidence in this case that the local school officials will, through economic necessity if for no other reason, abide by the orders and regulations of these state officials and, in most instances, will be relieved to find themselves no longer under the pressures and exhortations of these defendants

to abrogate their clear constitutional duties in this area. The local officials should, after the entry of this opinion and the accompanying decree, be able to return to the teaching of students and dealing with the related educational problems rather than expending their time and energies trying to tread the difficult "middle ground" between conflicting federal and state demands.

The argument that this Court is proceeding without jurisdiction over indispensable parties to this litigation, to-wit, local school boards throughout the state, is not persuasive. We are dealing here with state officials, and all we require at this time is that those officials affirmatively exercise their control and authority to implement a plan on a state-wide basis designed to insure a reasonable attainment of equal educational opportunities for all children in the state regardless of their race. It may be that in some instances a particular school district will need to be brought directly into the litigation to insure that the defendant state officials have implemented this Court's decree and that the state is not supporting, financially or otherwise, a local system that is being operated on an unconstitutional basis. Hopefully, these instances will be the exception and not the rule. Clearly this possibility does not diminish the propriety of the state-wide relief to be ordered. Having already resolved this issue of state-wide relief against the defendants in the order made and entered in *Lee, et al., United States of America, Amicus Curiae* v. *Macon County Board of Education,* July 13, 1964, 231 F. Supp. 743, further discussion and analysis is not necessary.

B. Other Considerations

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Invariably in this area of our country the "freedom of choice" plan has been chosen by the courts and the school

systems themselves as the method to effectuate the requirements of the Fourteenth Amendment in the field of desegregation of public educational facilities. This is the plan which this Court will require—for the time being—these defendant officials to implement throughout the State of Alabama.[27] This Court recognizes that in the freedom of choice plan there are many administrative complexities. It may be that these administrative problems will make some other method advisable in the future. It may well be that the freedom of choice method of desegregation will not fully and completely disestablish the dual public school system based upon race.[28] However, for the time being, provided that all of the factors designed to influence and having the effect of influencing choice be eliminated, the freedom of choice plan will be put into effect upon a state-wide basis. It should be emphasized that, if choice influencing factors are not eliminated, freedom of choice is a fantasy. A "freedom of choice" plan ordered by a court or adopted by school authorities is not an end in itself; it is but a means to an end. The plan must operate in such a manner as to meet the constitutional mandate of the Fourteenth Amendment. As was stated in the concurring opinion in *Bradley* v. *School Board*, 345 F. 2d 310, 323:

> Affirmative action means more than telling those who have long been deprived of freedom of educational

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[27] The reasons are obvious why school officials have not chosen other plans such as the "neighborhood school" plan, for under such a plan white students would be immediately required to attend Negro schools located in their neighborhoods.

[28] The United States Supreme Court has not yet ruled on the freedom of choice method of ending racial segregation in the field of public education. However, *Goss* v. *Board of Education*, 373 U.S. 683, 83 S.Ct. 1405, 10 L.Ed.2d 632 (1963), has been cited as support for such a plan. See *Bradley* v. *School Board of City of Richmond*, 345 F.2d 310, 318 (4th Cir. 1965).

> opportunity, "You now have a choice." In many instances the choice will not be meaningful unless the administrators are willing to bestow extra effort and expense to bring the deprived pupils up to the level where they can avail themselves of the choice in fact as well as in theory. . . . The district judge must determine whether the means exist for the exercise of a choice that is truly free and not merely pro forma.

In short, the measure of a freedom of choice plan—or, for that matter, any school plan designed to eliminate discrimination based upon race—is whether it is effective. If the plan does not work, then this Court, as well as the State of Alabama school officials—both state and local—is under a constitutional obligation to find some other method to insure that the dual school system of public education based upon race is eliminated. In adopting this plan, there-

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fore, we stress again that it may be only an interim plan. Its success will be periodically judged in the light of the criteria herein set out. For this and all other purposes, jurisdiction will be retained.

The decree and injunction heretofore issued in this case will be enlarged as herein indicated and a formal decree will be entered accordingly.

Done, this the 22nd day of March, 1967.

RICHARD T. RIVES
United States Circuit Judge

H. H. GROOMS
United States District Judge

FRANK M. JOHNSON, JR.
United States District Judge

DECREE

It is ORDERED, ADJUDGED and DECREED that the Alabama State Board of Education, Mrs. Lurleen Burns Wallace, Governor of the State of Alabama and President of the Alabama State Board of Education, James D. Nettles, Ed Dannelly, Mrs. Carl Strang, Fred L. Merrell, W. M. Beck, Victor P. Poole, W. C. Davis, Cecil Word, and Rev. Harold C. Martin, members of the Alabama State Board of Education, and Ernest Stone, Executive Officer and Secretary of the Alabama State Board of Education, and Alabama State Superintendent of Education, together with their agents, servants, employees, successors in office, and all those in active concert or participation with them who receive actual notice of this decree or any of them, shall be and hereby are permanently enjoined from discriminating on the basis of race in the operation or the conduct of the public schools of Alabama or in any manner pertaining to the public schools of Alabama. As set out more particularly in the body of this decree, said defendants shall take affirmative action to disestablish all state enforced or encouraged public school segregation and to eliminate the effects of past state enforced or encouraged racial discrimination in their activities and their operation of the public school systems throughout the State.

It is further ORDERED, ADJUDGED and DECREED that:

I

School Construction and Consolidation

A. The State Superintendent of Education shall require all local school systems that have been the subject of a

survey conducted by or under the auspices of the State Department of Education to submit to him, prior to the commencement of the 1967-68 school year, all plans that have been formulated or adopted for the consolidation of any schools in their systems that had at the time of the survey, or now have, fewer students than required under the minimum-student standards of the State Department of Education.

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B. The State Superintendent of Education shall continue to conduct surveys of the local school systems throughout the State, and require that those conducting the surveys shall:

1. Continue to collect and report data regarding the residence of students and the attendance at schools by race;

2. Not fail to recommend consolidation because desegregation would result;

3. Recommend, to the extent consistent with the proper operation of the school system as a whole, that consolidation shall be achieved in a manner to effect desegregation of the schools of the system;

4. Recommend, to the extent consistent with the proper operation of the school system as a whole, that the location, grades and capacity of new schools and expansions of existing school plants be such as to effect desegregation of the schools of the system.

C. Approval by the State Superintendent of Education of all sites upon which schools are to be constructed or existing facilities expanded shall not be based on any sur-

vey conducted prior to the entry of this decree, or any survey that does not accord with the standards set forth above in paragraph B.

D. Approval by the State Superintendent of Education of all sites upon which schools are to be constructed or existing facilities expanded shall be withheld if, judged in light of the capacity of existing facilities, the residence of the students, and the alternative sites available, the construction will not, to the extent consistent with the proper operation of the school system as a whole, further the disestablishment of state enforced or encouraged public school segregation and eliminate the effects of past state enforced or encouraged racial discrimination by the State public school system

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II

Teachers

A. The State Superintendent of Education shall develop a detailed program for assisting and encouraging faculty desegregation in the local school systems throughout the State for implementation prior to the 1967-68 school year and shall submit this program to the Court and all parties within 60 days after the entry of this Court's decree. The program should, at a minimum, establish ways in which the State Department of Education will assist local systems in recruiting, and in planning for the placing of new teachers and reassigning of old teachers on a desegregated basis so that by the fall of 1967, insofar as it is administratively feasible, no school located in a school district where students of both races are in attendance listed in Section IV of this decree will have teachers of only one race. The program should also provide for assistance in

providing training which may be necessary to upgrade the qualifications of some teachers in order to facilitate desegregation of faculty. The program should provide for further progress after 1967-68 to help said local school systems stay in compliance with constitutional requirements in the area of public school desegregation.

B. Any services made available by the State Superintendent of Education to assist local school boards to locate and employ suitable teachers, or to assist teachers to find suitable positions, shall be provided in a manner to effect faculty desegregation in the public schools throughout the State.

C. The State Superintendent of Education shall not give force or effect to that provision of Section 339 of Title 52 of the Alabama Code which requires that separate teacher institutes be held for Negro and white teachers; and he shall direct that a single, system-wide teacher institute be held in each local school system for the 1967-68 school year, and for each school year thereafter, and that such institutes be conducted in a nondiscriminatory manner.

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D. The State Superintendent of Education shall conduct all in-service training programs on a desegregated basis.

E. The State Superintendent of Education shall apply certification requirements without discrimination on the basis of race, and shall not apply certification requirements, or grant provisional certificates, in a manner to perpetuate faculty segregation or to avoid faculty desegregation.

F. The State Superintendent of Education shall inform all applicants for certification that the school systems

throughout the State are obliged to desegregate their faculties, and that teachers are subject to assignment in accordance with that obligation.

III

School Transportation

A. The defendant state officials shall require all local school boards listed in Section IV of this decree, prior to the commencement of the 1967-68 school year, to eliminate race as a basis for assigning students to school buses and to eliminate overlapping and duplicative bus routes based on race.

B. The defendant state officials shall require all of said local school boards, prior to the commencement of the 1967-68 school year, to establish nondiscriminatory criteria governing the availability of bus transportation to students within the school district. These criteria, at a minimum, should entitle each student to be transported to the school he attends if that school is the one nearest his residence and if that school is at least two miles from his residence.

C. The State Superintendent of Education shall require all local school boards listed in Section IV of this decree to submit to him for approval within 60 days after the entry of this decree their proposed bus routes and criteria

governing the eligibility for bus transportation. The State Superintendent shall approve or disapprove the proposed routes and criteria, within 30 days of receiving them, according to the standards set forth in the preceding paragraphs A and B of this section, and, to the extent that he disapproves them, he shall notify the local systems of their deficiencies.

D. The State Superintendent of Education shall require all of said local school boards to communicate those routes and criteria he has approved to students and parents of the school districts in a readily understandable manner and substantially before the opening of the 1967-68 school year. The local school authorities shall notify parents and children, prior to the choice period, that the bus routes and criteria governing the eligibility for bus transportation are being revised and will be established on a nondiscriminatory basis.

E. Whatever technical assistance is made available by the State Superintendent for assisting said local school boards in meeting school transportation problems shall be provided in a manner to assist the local school boards to eliminate overlapping and duplicative bus routes based on race and to formulate nondiscriminatory criteria regarding eligibility of students for transportation.

IV

Desegregation Plans for Local School Systems

The State Superintendent of Education shall notify the following school systems that they are required to adopt a desegregation plan for all grades commencing with the 1967-68 school year that meets the standards embodied in the plan attached to this decree and designated as Exhibit "A":

Alexander City
Andalusia
Anniston
Athens
Attalla
Auburn
Autauga County
Baldwin County
Bibb County
Blount County

Brewton
Butler County
Calhoun County
Carbon Hill
Chambers County
Cherokee County
Chilton County
Clarke County
Clay County
Cleburne County
Coffee County
Colbert County
Conecuh County
Coosa County
Covington County
Cullman
Cullman County
Dale County
Daleville
Dallas County
Decatur
DeKalb County
Demopolis
Dothan
Elba
Elmore County
Enterprise
Escambia County
Etowah County
Eufaula
Fayette County
Florala
Florence
Fort Payne
Franklin County
Geneva County
Greene County
Henry County
Houston County
Jackson County
Jacksonville
Jasper
Lamar County
Lanett
Lauderdale County
Lee County
Limestone County
Linden
Marengo County
Marion
Marion County
Marshall County
Monroe County
Morgan County
Mountain Brook
Muscle Shoals
Oneonta
Opelika
Opp
Ozark
Phenix City
Pickens County
Piedmont
Pike County

Randolph County
Roanoke
Russell County
Russellville
St. Clair County
Scottsboro
Selma
Sheffield
Shelby County
Sumter County
Sylacauga
Talladega
Talladega County
Tallapoosa County
Tallassee
Tarrant
Thomasville
Troy
Tuscaloosa
Tuscaloosa County
Tuscumbia
Walker County
Washington County
Winfield
Winston County

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The State Superintendent of Education shall inform these local school systems that the desegregation plan is to be adopted within 20 days from the entry of this decree; and within 25 days from the entry of this decree the State Superintendent shall submit a report to this Court and to all parties informing them of the action taken by him to discharge this obligation and the results of that action.

V

Institutions Under State Board of Education Control

No person shall be denied admission to any trade school, junior college, or state college[1] administered by the Ala-

[1] The term "state college," as used herein, includes all state colleges or universities except the University of Alabama, Auburn University, University of South Alabama at Mobile, and Alabama College at Montevallo, which institutions have separate boards of trustees and are not administered by the Alabama State Board of Education.

bama State Board of Education upon the ground of race, nor shall he be subjected to racial discrimination in connection with his application for enrollment in or his attendance at any such trade school, junior college, or state college. Dual attendance zones based on race for such trade schools, junior colleges, and state colleges shall be abolished. The State Department of Education shall direct such trade schools, junior colleges, and state colleges to recruit, hire, and assign teachers so as to desegregate faculty and to accomplish some faculty desegregation in each such trade school, junior college, and state college by September 1967.

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VI

Equalization of Facilities

The State Superintendent of Education shall develop, and submit to this Court and all the parties within 120 days after the entry of this decree, a detailed program for bringing the quality of the physical facilities, equipment, services, courses of instruction, and instructional materials of schools previously maintained for Negro students up to the level in schools previously maintained for white students. This program shall eliminate those disparities reflected in different pupil-teacher ratios, survey classifications of buildings and sites, per pupil expenditures, valuation of school property, library books per pupil, course offerings, accreditation, and transportation. In connection with applications for teacher units for vocational teachers or teachers of exceptional children, the State Superintendent of Education shall consider and grant those applications that satisfy educational requirements and had been submitted before the entry of this decree on behalf of

schools traditionally maintained for Negro students, prior to acting upon other applications for such units.

VII

Information and Reports

A. The State Superintendent of Education shall make, at reasonable times and places, and upon reasonable notice, the following available to all parties:

1. All consolidation plans submitted to him by local school boards pursuant to the requirements of paragraph A of Section I of this decree.

2. All survey reports hereafter conducted pursuant to paragraph B of Section I of this decree.

3. All applications and records of action by the State Superintendent of Education regarding the approval or disapproval of school construction or expansion, together with all information relating to the

sites, including the pertinent survey reports.

4. All documents relating to teacher institutes and to in-service training programs, including a report giving the number of teachers that attended each institute, the schools the teachers were from, and the race of the teachers.

5. All proposals of the local school boards relating to the routing of school buses and the criteria governing eligibility for bus transportation that are submitted to the State Superintendent for his approval under paragraph C of Section III of this decree, together with a report indicating which proposals have

been approved and when and how students and parents in the various school systems throughout the State were informed of these routes and criteria.

6. All records pertaining to action taken by the State Superintendent of Education with respect to applications for teacher units for teachers of exceptional children and vocational education teachers.

7. Records indicating the State Superintendent's action with respect to provisional teaching certificates, and a report indicating how applicants for certification were informed of the obligation of the local systems regarding faculty desegregation.

8. Records showing the attendance zones, bus routes, racial composition of faculty, and racial composition of student body for each trade school, junior college, and state college.

B. The State Superintendent of Education shall submit to the Clerk of this Court and serve upon all parties:

1. Within 60 days after the entry of this decree the detailed program regarding faculty desegregation required by paragraph A of Section II of this decree.

2. Within 120 days after the entry of this decree

the detailed program regarding school equalization required by Section VI of this decree.

3. Within 25 days after entry of this decree, a report on the action taken by the State Superintendent of Education respecting the 99 school districts listed in Section IV of this decree, and the results of that action.

4. A report, which must be submitted by October 5 each year, setting forth the following information with respect to the local school systems listed in Section IV of this decree:

(a) The number of students by race, in each grade of each school for the current school year;

(b) The number of faculty members of each race assigned to each school for the current school year, together with the number of faculty vacancies or new positions, by school, that have arisen or have been filled by the school board since the last report; and

(c) The number of students that have requested to transfer from the schools they were assigned to, together with a description of the action taken by the local school board on such requests and the reasons therefor.

5. A report, which must be submitted on or before June 15 of each year, setting forth the following information with respect to each school system listed in Section IV of this decree:

The number of choice applications received for each grade, the number of choices granted and denied, and the reasons for all denials.

IX

Interference

The defendant state officials should not interfere with,

prevent or obstruct by any means the elimination of racial discrimination by local school officials in any school system in the State of Alabama.

X

The 1965-1966 Tuition Grant Statute

Title 52, Section 61(8), Code of Alabama (Tuition Grant Statute, No. 687, approved September 1, 1965), is hereby declared unconstitutional. The defendant state officials, their agents, employees, and successors in office shall not approve or permit the approval or the payment of any tuition grants or grants-in-aid under the authority of this law.

It is further ORDERED that the United States submit to this Court within 30 days, and serve upon all parties, a report informing the Court whether any of the school systems listed in Section IV of this decree have failed, following the entry of this Court's decree, to adopt a satisfactory desegregation plan.

It is further ORDERED that the costs of this action be and they are hereby taxed against the defendant state officials.

It is further ORDERED that jurisdiction of this cause be and it is hereby retained.

Done this the 22nd day of March, 1967.

RICHARD T. RIVES
United States Circuit Judge

H. H. GROOMS
United States District Judge

FRANK M. JOHNSON, JR.
United States District Judge

EXHIBIT "A"

Desegregation Plan

The ..... Board of Education will take the following affirmative action to disestablish all state enforced or encouraged public school segregation and to eliminate the effects of past state enforced or encouraged racial discrimination in the operation of the school system:

I

Exercise of Choice

The following provisions will apply to all grades commencing with the 1967-68 school year:

A. *Who May Exercise Choice.* A choice of schools may be exercised by a parent or other adult person serving as the student's parent. A student may exercise his own choice if he (1) is exercising a choice for the ninth or a higher grade, or (2) has reached the age of fifteen at the time of the exercise of choice. Such a choice by a student is controlling unless a different choice is exercised for him by his parent or other adult person serving as his parent during the choice period or at such later time as the student exercises a choice. Each reference in this plan to a student's exercising a choice means the exercise of the choice, as appropriate, by a parent or such other adult, or by the student himself.

B. *Annual Exercise of Choice.* All students, both white and Negro, will be required to exercise a free choice of schools annually.

C. *Choice Period.* The period for exercising choice will commence May 1, 1967, and end June 1, 1967, and in subsequent years will commence March 1 and end March 31 preceding the school year for which the choice is to be exercised. No student or prospective student who exercises his choice within the choice period will be given any preference because of the time within the period when such choice was exercised.

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D. *Mandatory Exercise of Choice.* A failure to exercise a choice within the choice period will not preclude any student from exercising a choice at any time before he commences school for the year with respect to which the choice applies, but such choice may be subordinated to the choices of students who exercised choice before the expiration of the choice period. Any student who has not exercised his choice of school within a week after school opens will be assigned to the school nearest his home where space is available under standards for determining available space which will be applied uniformly throughout the system.

E. *Public Notice.* On or within a week before the date the choice period opens, the school board will arrange for the conspicuous publication of a notice describing the provisions of this plan in the newspaper most generally circulated in the community. The text of the notice will be substantially similar to the text of the explanatory letter sent home to parents. Publication as a legal notice will not be sufficient. Copies of this notice will also be given at that time to all radio and television stations serving the community. Copies of this plan will be posted in each school in the school system and at the office of the Superintendent of Education.

F. *Mailing of Explanatory Letters and Choice Forms.* On the first day of the choice period there will be distributed an explanatory letter and a choice form to the parent (or other adult person acting as parent, if known to the school board) of each student, together with a return envelope addressed to the Superintendent. The text for the explanatory letter and choice form will essentially conform to the sample letter and choice form appended to this plan.

G. *Extra Copies of the Explanatory Letter and Choice Form.* Extra copies of the explanatory letter and choice form will be freely available to parents, students, prospective students, and the general public at each school in the

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system and at the office of the Superintendent of Education during the times of the year when such schools are usually open.

H. *Content of Choice Form.* Each choice form will set forth the name and location of and grades offered at each school and may require of the person exercising the choice the name, address, age of student, school and grade currently or most recently attended by the student, the school chosen, the signature of one parent or other adult person serving as parent, or where appropriate the signature of the student, and the identity of the person signing. No statement of reasons for a particular choice, or any other information, or any witness or other authentication, will will be required or requested.

I. *Return of Choice Form.* At the option of the person completing the choice form, the choice may be returned by mail, in person, or by messenger to any school in the school system or to the office of the Superintendent.

J. *Choices Not on Official Form.* The exercise of choice may also be made by the submission in like manner of any other writing which contains information sufficient to identify the student and indicates that he has made a choice of school.

K. *Choice Forms Binding.* When a choice form has once been submitted and the choice period has expired, the choice is binding for the entire school year and may not be changed except in cases of parents making different choices for their children under the conditions set forth in paragraph I-A of this plan and in exceptional cases where, absent the consideration of race, a change is educationally called for or where compelling hardship is shown by the student.

L. *Preference in Assignment.* In assigning students to schools, no preference will be given to any student for prior attendance at a school and except with the approval of the State Superintendent of Education in extraordinary circumstances, no choice will be denied for any reason other than overcrowding. In case of overcrowding at any school, preference will be given on the basis of proximity

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of the school to the homes of the students choosing it, without regard to race or color. Standards for determining overcrowding will be applied uniformly throughout the system.

M. *Second Choice Where First Choice Is Denied.* Any student whose choice is denied will be promptly notified in writing and given his choice of any school in the school system serving his grade level where space is available. The student will have seven days from the receipt of notice

of a denial of first choice in which to exercise a second choice.

N. *Transportation.* Where transportation is generally provided, buses will be routed to the maximum extent feasible in light of the geographic distribution of students, so as to serve each student choosing any school in the system. Every student choosing the school nearest his residence must be transported to the school to which he is assigned under these provisions, whether or not it is his first choice, if that school is at least two miles from his residence. The school system will adopt nondiscriminatory bus routes and criteria governing the availability of bus transportation to students, so that race will not be a basis for assigning students to school buses and overlapping and duplicative bus routes based on race will be eliminated. Prior to the choice period, parents and children will be advised that such routes and criteria will be adopted, and substantially prior to the opening of the 1967-68 school year the parents and children will be notified of the routes and criteria, in a readily understandable manner.

O. *Officials Not to Influence Choice.* At no time shall any official, teacher, or employee of the school system influence any parent, or other adult person serving as a parent, or any student, in the exercise of a choice or favor or penalize any persons because of a choice made. If the school board employs professional guidance counselors,

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such persons will base their guidance and counseling on the individual student's particular personal, academic, and vocational needs. Such guidance and counseling by teachers as well as professional guidance counselors will be available to all students without regard to race or color.

P. *Protection of Persons Exercising Choice.* Within their authority, school officials are responsible for the protection of persons exercising rights under or otherwise affected by this plan. They will, without delay, take appropriate action with regard to any student or staff member who interferes with the successful operation of the plan. Such interference will include harassment, intimidation, threats, hostile words or acts, and similar behavior. The school board will not publish, allow, or cause to be published, the names or addresses of pupils exercising rights or otherwise affected by this plan. If officials of the school system are not able to provide sufficient protection, they will seek whatever assistance is necessary from other appropriate officials.

II

Prospective Students

Each prospective new student will be required to exercise a choice of schools before or at the time of enrollment. Each such student known to the school system will be furnished a copy of the prescribed letter to parents, and choice form, by mail or in person, on the date the choice period opens or as soon thereafter as the school system learns that he plans to enroll. Where there is no preregistration procedure for newly entering students, copies of the choice forms will be available at the office of the Superintendent and at each school during the time the school is usually open.

III

Services, Facilities, Activities And Programs

No student will be segregated or discriminated against on account of race or color in any service, facility, activity,

or program (including transportation, athletics, or other extra-curricular activity) that can be conducted or spon-

sored by or affiliated with the school in which he is enrolled. A student attending school for the first time on a desegregated basis will not be subject to any disqualification or waiting period for participation in activities and programs, including athletics, which might otherwise apply because he is a transfer or newly assigned student except that such transferees shall be subject to longstanding, nonracially based rules of city, county, or state athletic associations dealing with the eligibility of transfer students for athletic contests. All school use or school sponsored use of athletic fields, meeting rooms, and all other school related services, facilities, activities, and programs such as commencement exercises and parent-teacher meetings which are open to persons other than enrolled students, will be open to all persons without regard to race or color. All special educational programs conducted by the school system will be conducted without regard to race or color.

IV

School Equalization

A. *Inferior Schools.* In schools heretofore maintained for Negro students, the school system will take prompt steps necessary to provide physical facilities, equipment, courses of instruction, and instructional materials of quality equal to that provided in schools previously maintained for white persons. Conditions of overcrowding, as determined by pupil-teacher ratios and pupil-classroom ratios will, to the extent feasible, be distributed evenly between schools formerly maintained for Negro students and those

formerly maintained for white students. If for any reason it is not feasible to improve sufficiently any school formerly maintained for Negro students, where such improvement would otherwise be required by this subparagraph, such school will be closed as soon as possible, and students enrolled in the school will be reassigned on the basis of freedom of choice. By October of each year, the school board will report to the State Superintendent of Education pupil-teacher ratios, pupil-classroom ratios, and per-pupil expenditures both as to operating and capital im-

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provement costs, and will outline the steps to be taken and the time within which they will accomplish the equalization of such schools.

B. *Remedial Programs.* The school system will provide remedial education programs which permit students attending or who have previously attended all-Negro schools to overcome past inadequacies in their education.

V

School Construction And Consolidation

To the extent consistent with the proper operation of the school system as a whole, the school board will, in locating and designing new schools, in expanding existing facilities, and in consolidating schools, do so with the object of eradicating past discrimination and of effecting desegregation. The school board will not build, consolidate or expand schools based on recommendations of any state survey conducted prior to March 1967 unless the state reapproves such building, consolidation or expansion. The school board will not fail to consolidate schools because desegregation would result.

VI

Faculty And Staff

A. *Faculty Employment and Assignment.* Race or color will not be a factor in the hiring, assignment, reassignment, promotion, demotion, or dismissal of teachers and other professional staff members, including student teachers, except that race will be taken into account for the purpose of correcting the effect of the past segregated assignment of teachers in the dual system. Teachers, principals, and staff members will be assigned to schools so that the faculty and staff is not composed exclusively of members of one race. Wherever possible, teachers will be assigned so that more than one teacher of the minority race (white or Negro) will be on a desegregated faculty. The school board will take affirmative steps to accomplish the desegregation of its school faculties, including substantial desegregation of faculties in as many of the schools as possible for the 1967-68 school year. The objective of the

school system is that the pattern of teacher assignment to any particular school shall not be identifiable as tailored for a heavy concentration of either Negro or white pupils in the school. The school system will accomplish faculty desegregation in a manner whereby the abilities, experience, specialties, and other qualifications of both white and Negro teachers in the system will be, insofar as administratively feasible, distributed evenly among the various schools of the system.

B. *Dismissals.* Teachers and other professional staff members will not be discriminatorily assigned, dismissed, demoted, or passed over for retention, promotion, or re-

hiring, on the ground of race or color. In any instance where one or more teachers or other professional staff members are to be displaced as a result of desegregation, no staff vacancy in the school system will be filled through recruitment from outside the system unless no such displaced staff member is qualified to fill the vacancy. If, as a result of desegregation, there is to be a reduction in the total professional staff of the school system, the qualifications of all staff members in the system will be evaluated in selecting the staff member to be released without consideration of race or color. A report containing any such proposed dismissals, and the reasons therefor, shall be filed with the State Superintendent of Education.

VII

Reports

A. *Report on Choice Period:* The school system will file with the State Superintendent of Education on or before June 10 of each year a report tabulating by race the number of choice applications and transfer applications received for enrollment in each grade in each school in the system, and the number of choices and transfers granted and the number of denials in each grade of each school. The report will also state any reasons relied upon in denying choice and shall tabulate, by school and by race of student, the number of choices and transfers denied for each such reason.

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B. *Report After School Opening.* The system will file with the State Superintendent of Education within 15 days after the opening of schools for the fall semester of each year a report setting forth the following information:

(1) The name, address, grade, school of choice and school of present attendance of each student who has withdrawn or requested withdrawal of his choice of school or who has transferred after the start of the school year, together with a description of any action taken on his request and the reasons therefor.

(2) The number of faculty vacancies, by school, that have occurred or been filled since the adoption of this plan or the latest report submitted pursuant to this subparagraph. This report shall state the race of the teacher employed to fill each such vacancy and indicate whether such teacher is newly employed or was transferred from within the system. The tabulation of the number of transfers within the system shall indicate the schools from which and to which the transfers were made. The report shall also set forth the number of faculty members of each race assigned to each school for the current year.

(3) The number of students by race, in each grade of each school.

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EXPLANATORY LETTER

(School System Name and Office Address)

(Date Sent)

Dear Parent:

All grades in our school system will be desegregated next school year. Any student who will be entering one of these grades next year may choose to attend any school in our system, regardless of whether that school was formerly all white or all Negro. It does not matter which school your child is attending this year. You and your child may select any school you wish.

Every student, white and Negro, must make a choice of schools. If a child is entering the ninth or higher grade, or if the child is fifteen years old or older, he may make the choice himself. Otherwise a parent or other adult serving as parent must sign the choice form. A child enrolling in the school system for the first time must make a choice of schools before or at the time of his enrollment.

The form on which the choice should be made is attached to this letter. It should be completed and returned by June 1, 1967.* You may mail it in the enclosed envelope, or deliver it by messenger or by hand to any school principal or to the office of the Superintendent at any time between May 1 and June 1. No one may require you to return your choice form before June 1 and no preference is given for returning the choice form early.

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* In subsequent years the dates in both the explanatory letter and the choice form should be changed to conform to the choice period.

No principal, teacher or other school official is permitted to influence anyone in making a choice or to require early return of the choice form. No one is permitted to favor or penalize any student or other person because of a choice made. A choice once made cannot be changed except for serious hardship.

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No child will be denied his choice unless for reasons of overcrowding at the school chosen, in which case children living nearest the school will have preference.

Transportation will be provided, if reasonably possible, no matter what school is chosen. The school board is rerouting buses and writing new rules for assigning students to buses, so that there will be no more overlapping bus routes and students will be assigned to buses without regard to race. (Delete if the school system does not provide transportation.)

Your school board and the school staff will do everything we can to see to it that the rights of all students are protected and that desegregation of our schools is carried out successfully.

Sincerely,

Superintendent

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CHOICE FORM

This form is provided for you to choose a school for your child to attend next school year. You have 30 days to make your choice. It does not matter which school your child attended last year, and does not matter whether the school you choose was formerly a white or a Negro school. This form must be mailed or brought to the principal of any school in the system or to the office of the Superintendent (address), by June 1, 1967. A choice is required for each child.

Name of child .....
(Last) (First) (Middle)

Address .....

Name of parent or other adult serving as parent .....

If child is entering first grade, date of birth:

.....
(Month) (Day) (Year)

Grade child is entering .....

School attended last year .....

Choose one of the following schools by marking an X beside the name.

	Name of school	*Grades Offered*	*Location*
( )	.....	.....	.....

( ) (All schools in the district, the grades offered by
( ) each, and the location of each will be listed on the
( ) form prior to its distribution to parents and stu-
( ) dents.)

( )	.....	.....	.....

Signature .....

Date .....

.....

....

To be filled in by Superintendent:

School assigned .....

Order to Adopt Plan for Desegregation

(Filed June 1, 1967)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

ARLAM CARR, ET AL.,

Plaintiffs,

vs.

MONTGOMERY COUNTY BOARD OF EDUCATION; JAMES W. RUTLAND, JR., FRED BEAR, GEORGE C. STARKE, GEORGE A. DOZIER, DR. J. EDWARD WALKER, ISABELLE B. THOMASSON and DR. ROBERT PARKER, Members of the Montgomery County Board of Education; and WALTER McKEE, Superintendent of Education of Montgomery County,

Defendants,

UNITED STATES OF AMERICA,

Amicus Curiae.

DECREE

Upon a hearing pursuant to this Court's order of April 28, 1967, directing the defendant school system to show cause why it should not be required to adopt a desegregation plan which conforms with the standards embodied in *United States and Linda Stout, et al. v. Jefferson County Board of Education, et al.*, Fifth Circuit No. 23345, Dec. 29, 1966 (adopted with modifications by the Court, sitting

en banc, March 29, 1967), and in Exhibit "A" attached to this Court's decree of March 22, 1967, in the case of *Anthony T. Lee, et al.* v. *Macon County Board of Education, et al.* (Civil Action No. 604-E, three-judge court), it is hereby

ORDERED, ADJUDGED and DECREED that the defendants, their agents, officers, employees and successors, and all those in active concert or participation with them, shall adopt and implement the attached plan for the desegregation of the public school system of Montgomery County, Alabama. It is further

ORDERED that this Court specifically retain jurisdiction of this cause.

Done, this the 1st day of June, 1967.

FRANK M. JOHNSON, JR.
United States District Judge

DESEGREGATION PLAN

The Montgomery County Board of Education will take the following affirmative action to disestablish all state enforced or encouraged public school segregation and to eliminate the effects of past state enforced or encouraged racial discrimination in the operation of the school system:

I

Exercise Of Choice

The following provisions will apply to all grades commencing with the 1967-68 school year:

A. *Who May Exercise Choice.* A choice of schools may be exercised by a parent or other adult person serving as the student's parent. A student may exercise his own choice if he (1) is exercising a choice for the ninth or a higher grade, or (2) has reached the age of fifteen at the time of the exercise of choice. Such a choice by a student is controlling unless a different choice is exercised for him by his parent or other adult person serving as his parent during the choice period or at such later time as the student exercises a choice. Each reference in this plan to a student's exercising a choice means the exercise of the choice, as appropriate, by a parent or such other adult, or by the student himself.

B. *Annual Exercise of Choice.* All students, both white and Negro, will be required to exercise a free choice of schools annually.

C. *Choice Period.* The period for exercising choice will commence March 1 and end March 30 preceding the school

year for which the choice is to be exercised. No student or prospective student who exercises his choice within the choice period will be given any preference because of the time within the period when such choice was exercised.

D. *Mandatory Exercise of Choice.* A failure to exercise a choice within the choice period does not preclude any student from exercising a choice at any time before he commences school for the year with respect to which the choice applies, but such choice may be subordinated to the choice of students who exercised choice before the expiration of the choice period. Any student who has not exercised his choice of school within a week before school opens will be assigned to the school nearest his home where space is available under standards for determining available space which will be applied uniformly throughout the system.

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E. *Public Notice.* On, or within a week before, the date the choice period opens, the school board will arrange for the conspicuous publication of a notice describing the provisions of this plan in the newspaper most generally circulated in the community. The text of the notice will be substantially similar to the text of the explanatory letter sent home to parents. Publication as a legal notice will not be sufficient. Copies of this notice will also be given at that time to all radio and television stations serving the community. Copies of this plan will be posted in each school in the school system and at the office of the Superintendent of Education.

F. *Distribution of Explanatory Letters and Choice Forms.* On the first day of the choice period there will be distributed an explanatory letter and a choice form (Ap-

pendices A and B) to the parent (or other adult person acting as parent, if known to the school board) of each student. The distribution of the explanatory letter and choice form may be either by mail or by handing them to the student for delivery to the parent, or other adult person acting as parent. Regardless of the method of distribution, the affirmative duty of securing a choice form from each student is upon the defendants. The text for the explanatory letter and choice form will essentially conform to the sample letter and choice form appended to this plan. Extra copies of the explanatory letter and choice form will be freely available to parents, students, prospective students, and the general public at each school in the system and at the office of the Superintendent of Education.

G. *Return of Choice Form.* At the option of the person completing the choice form, the choice may be returned by mail, in person or by messenger to any school in the school system or to the office of the Superintendent.

H. *Choices Not on Official Form.* The exercise of choice may also be made by the submission in like manner of any other writing which contains information sufficient to identify the student and indicates that he has made a choice of school.

I. *Choice Forms Binding.* Once a choice form has been submitted it is binding for the entire school year, and may not be changed except in cases of parents making different choices for their children under the conditions set forth in paragraph I-A of this plan and in cases where, absent the consideration of race, compelling hardship is shown by the student.

J. *Preference in Assignment.* In assigning students to

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schools, no preference will be given to any student for prior attendance at a school and except with the approval of the Court in extraordinary circumstances no choice will be denied for any reason other than overcrowding. In case of overcrowding at any school, preference will be given on the basis of proximity of the school to the homes of the students choosing it, without regard to race or color. Standards for determining overcrowding will be applied uniformly throughout the system. All existing attendance areas as defined by district lines and feeder school descriptions will be abolished effective 1967.

K. *Second Choice Where First Choice Is Denied.* Any student whose choice is denied will be promptly notified in writing and given his choice of any school in the school system serving his grade level where space is available. The student will have seven calendar days from and after the opening of school in which to exercise a second choice.

L. *Transportation.* Where transportation is generally provided, buses will be routed to the maximum extent feasible in light of the geographic distribution of students, so as to serve each student choosing any school in the system. Every student choosing either the formerly white or the formerly Negro school nearest his residence must be transported to the school to which he is assigned under these provisions, whether or not it is his first choice, if that school is sufficiently distant from his home to make him eligible for transportation under generally applicable transportation rules. The school system will adopt nondiscriminatory bus routes and criteria governing the availability of bus

transportation to students, so that race will not be a basis for assigning students to school buses and overlapping and duplicative bus routes based on race will be eliminated. Prior to the choice period, parents and children will be advised that such routes and criteria will be adopted, and substantially prior to the opening of the 1967-68 school year the parents and children will be notified of the routes and criteria, in a readily understandable manner.

M. *Officials Not to Influence Choice.* At no time shall any official, teacher, or employee of the school system influence any parent, or other adult person serving as a parent, or any student, in the exercise of a choice or favor or penalize any person because of a choice made. After the expiration of the choice period, the school system will make all reasonable efforts to obtain a completed choice form from each student who has not exercised a choice. If the school board employs professional guidance counselors, such persons will base their guidance and counseling on the individual student's particular, personal, academic,

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and vocational needs. Such guidance counselors will be available to all students without regard to race or color.

N. *Protection of Persons Exercising Choice.* Within their authority, school officials are responsible for the protection of persons exercising rights under or otherwise affected by this plan. They will, without delay, take appropriate action with regard to any student or staff member who interferes with the successful operation of the plan. Such interference will include harassment, intimidation, threats, hostile words or acts, and similar behavior. The school board will not publish, allow, or cause to be

published, the names or addresses of pupils exercising rights or otherwise affected by this plan. If officials of the school system are not able to provide sufficient protection, they will seek whatever assistance is necessary from other appropriate officials.

II

Prospective Students

Each prospective new student will be required to exercise a choice of schools before or at the time of enrollment. Each such student known to the school system will be furnished, by mail or in person, a copy of the prescribed letter to parents and the choice form on the date the choice period opens, or as soon thereafter as the school system learns that he plans to enroll. Where there is no preregistration procedure for newly entering students, copies of the choice forms will be available at the office of the Superintendent and at each school during the time the school is usually open.

III

Services, Facilities, Activities and Programs

No student will be segregated or discriminated against on account of race or color in any service, facility, activity, or program (including transportation, athletics, or other extracurricular activity) that may be conducted or sponsored by or affiliated with the school in which he is enrolled. A student attending school for the first time on a desegregated basis will not be subject to any disqualification or waiting period for participation in activities and programs, including athletics, which might otherwise apply because he is a transfer, or newly assigned, student. All

school use or school sponsored use of athletic fields, meeting rooms, and all other school related services, facilities, activities, and programs such as commencement exercises and parent-teacher meetings which are open to persons other than enrolled students will be open to all persons without regard to race or color. All special educational

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programs conducted by the school system will be conducted without regard to race or color.

IV.

School Equalization

Prior to the commencement of the 1967-68 school year, the following schools will be discontinued as educational facilities:

Alice White	Lillian Dungee
Arrington	Waugh
Big Zion	Woodley
Tankersley	Zion Hill
Chappell Gray	McLean
G. W. Trenholm	McLemore
Lillian Dabney	Mt. Zion Road

The Montgomery County Board will design and provide remedial education programs to eliminate the effects of past discrimination, particularly, the results of the unequal and inferior educational opportunities which have been offered in the past to Negro students in the Montgomery County school system.

Students displaced as a result of the closing of the above-listed schools will be assigned to schools, without regard to race or color, on a freedom of choice basis as described in this plan.

Expansion of existing school plants to accommodate displaced students will be designed to eliminate the dual school system. In the remaining schools heretofore maintained for Negro students, the school system will take promptly the steps necessary to provide physical facilities, equipment, courses of instruction, and instructional materials of quality equal that provided in schools previously maintained for white persons. Conditions of overcrowding, as determined by pupil-teacher ratios will, to the extent feasible, be distributed evenly between schools formerly maintained for Negro students and those formerly maintained for white students. If for any reason it is not feasible to improve sufficiently any school formerly maintained for Negro students, where such improvement would otherwise be required by this subparagraph, such school will be closed as soon as possible, and students reassigned on the basis of freedom of choice. By October of each year, the school board will report to the Court pupil-teacher ratios, pupil-classroom ratios, and

(Copy illegible)

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V

School Construction and Consolidation

To the extent consistent with the proper operation of the school system as a whole, the school board will, in locating and designing new schools, in expanding existing facilities, and in consolidating schools, do so with the object of eradicating past discrimination and of effecting desegregation. The school board will not build, consolidate or expand schools based on recommendations of any state survey

conducted prior to March, 1967, unless the state reapproves such building, consolidation or expansion. The school board will not fail to consolidate schools because desegregation would result.

VI

Faculty and Staff

A. *Faculty Employment and Assignment.* Race or color will not be a factor in the hiring, assignment, reassignment, promotion, demotion or dismissal of teachers and other professional staff members, including student teachers, except that race will be taken into account for the purpose of counteracting or correcting the effect of the past segregated assignment of teachers in the dual system. Teachers, principals, and staff members will be assigned to schools so that the faculty and staff is not composed exclusively of members of one race. Wherever possible, teachers will be assigned so that more than one teacher of the minority race (white or Negro) will be on a desegregated faculty. The school board will take positive and affirmative steps to accomplish the desegregation of its school faculties, including substantial desegregation of faculties in as many of the schools as possible for the 1967-68 school year, notwithstanding that teacher contracts for the 1967-68 or 1968-69 school year have already been signed and approved. The objective of the school system is that the pattern of teacher assignment to any particular school shall not be identifiable as tailored for a heavy concentration of either Negro or white pupils in the school. The school system will accomplish faculty desegregation in a manner whereby the abilities, experience, specialties, and other qualifications of both white and Negro teachers in the sys-

tem will be, insofar as administratively feasible, distributed evenly among the various schools of the system.

B. *Dismissals.* Teachers and other professional staff members will not be discriminatorily transferred, dismissed, demoted, or passed over for retention, probation, or rehiring on the ground of race or color. In any instance,

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where one or more teachers or other professional staff members are to be displaced as a result of desegregation, no staff vacancy in the school system will be filled through recruitment from outside the system unless no such displaced staff member is qualified to fill the vacancy. If, as a result of desegregation, there is to be a reduction in the total professional staff of the school system, the qualifications of all staff members in the system will be evaluated in selecting the staff member to be released without consideration of race or color. A report containing any such proposed dismissals, and the reasons therefor, shall be filed with the Court, and copies served upon opposing counsel within five (5) days after such dismissal, demotion, etc., is proposed.

C. *Notice to New Staff Members.* In the recruitment and employment of teachers and other professional personnel, all applicants or other prospective employees will be informed that Montgomery County operates a racially desegregated school system and that members of its staff are subject to assignment in the best interest of the system and without regard to the race or color of the particular employee.

D. *Encouragement of Voluntary Faculty Transfers.* The Superintendent of Schools and his staff will take

affirmative steps to solicit and encourage teachers presently employed to accept transfers to schools in which the majority of the faculty members are of a race different from that of the teacher to be transferred.

VII

Reports to the Court

A. *Report on Choice Period.* The defendants shall serve upon the opposing parties and file with the Court on or before June 7 each year a report tabulating by race the number of choice applications and transfer applications received for enrollment in each grade in each school in the system, and the number of choices and transfers granted and the number of denials in each grade of each school. The report will also state any reasons relied upon in denying choice and shall tabulate, by school and by race of student, the number of choices and transfers denied for each such reason.

B. *Report on Faculty Assignments.* The school officials will report to the Court by June 15, and each such date until further order by this Court, the planned assignments of professional staff to each school for the next school year by race and grade or, where appropriate, by subject taught

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or position held and report, as it occurs, any subsequent change in planned staff assignments affecting staff desegregation.

C. *Report After School Opening.* The system will file with the Court within fifteen (15) days after the opening of schools for the fall semester of each year a report setting forth the following information:

(1) The name, address, grade, school of choice and school of present attendance of each student who has withdrawn or requested withdrawal of his choice of school or who has transferred after the start of the school year, together with a description of any action taken on his request and reasons therefor.

(2) The number of faculty vacancies, by school, that have occurred or been filled since the adoption of this plan or the latest report submitted pursuant to this subparagraph. This report shall state the race of the teacher employed to fill each such vacancy and indicate whether such teacher is newly employed or was transferred from within the system. The tabulation of the number of transfers within the system shall indicate the schools from which and to which the transfers were made. The report shall also set forth the number of faculty members of each race assigned to each school for the current year.

(3) The number of students, by race, in each grade of each school.

APPENDIX A

Explanatory Letter

(School System Name and Office Address)

(Date Sent)

Dear Parent:

All grades in our school system will be desegregated next school year. Any student who will be entering one of these grades next year may choose to attend any school in our system, regardless of whether that school was formerly all white or all Negro. It does not matter which school your child is attending this year. You and your child may select any school you wish.

All students, both white and Negro, must make a choice of schools. If a child is entering the ninth or higher grade, or if the child is fifteen years old or older, he may make the choice himself. Otherwise a parent or other adult serving as parent must sign the choice form. A child enrolling in the school system for the first time must make a choice of schools before or at the time of his enrollment.

The form on which the choice should be made is attached to this letter. It should be completed and returned by March 31, 1968.* You may mail it, or deliver it by messenger or by hand to any school principal, or to the office of the Superintendent at any time between March 1 and March 31. No one may require you to return your choice

* In subsequent years the dates in both the explanatory letter and the choice form should be changed to conform to the choice period.

form before March 31 and no preference is given for returning the choice form early.

No principal, teacher or other school official is permitted to influence anyone in making a choice or to require early return of the choice form. No one is permitted to favor or penalize any student or other person because of a choice made. A choice once made cannot be changed except for serious hardship.

No child will be denied his choice unless for reasons of overcrowding at the school chosen, in which case children living nearest the school will have preference.

Transportation will be provided, if reasonably possible, no matter what school is chosen. The school board is rerouting buses and writing new rules for assigning students to buses so that there will be no more overlapping bus routes

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and students will be assigned to buses without regard to race.

Your school board and the school staff will do everything we can to see to it that the rights of all students are protected and that desegregation of our schools is carried out successfully.

Sincerely,

Superintendent

APPENDIX B

Choice Form

This form is provided for you to choose a school for your child to attend next school year. You have 30 days to make your choice. It does not matter which school your child attended last year, and does not matter whether the school you choose was formerly a white or a Negro school. This form must be mailed or brought to the principal of any school in the system or the office of the Superintendent (address), by March 31, 1968. A choice is required for each child.

Name of child .....
(Last) (First) (Middle)

Address .....

Name of Parent or other
adult serving as parent .....

If child is entering first grade, date of birth:

.....
(Month) (Day) (Year)

Grade child is entering .....

School attended last year .....

Choose one of the following schools by marking an X beside the name.

	Name of School	*Grades Offered*	*Location*
( )	.....	.....	.....

( ) (All schools in the district, the grades offered by
( ) each, and the location of each will be listed on the
( ) form prior to its distribution to parents and
( ) students.)

( )	.....	.....	.....

Signature .....

Date .....

.....

.....

To be filled in by Superintendent:

School assigned .....

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Amicus Curiae Notice of Motion and Motion for Further Relief

(Filed August 17, 1967)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

TO: THE ATTORNEYS OF RECORD HEREIN

PLEASE TAKE NOTICE THAT ON , 1967, at M., or as soon thereafter as counsel may be heard, in the courtroom of the United States District Court for the Middle District of Alabama, Federal Courthouse Building, Montgomery, Alabama, the United States, Amicus Curiae herein, will move the Court for an order further enjoining the defendants from failing to make additional assignments and reassignments of faculty members in the Montgomery County, Alabama, public school system for the purpose of achieving substantial faculty desegregation by the 1967-68 school year and as grounds therefor, states that:

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1. On June 1, 1967, the Court entered an order after hearing on its order to show cause dated April 28, 1967, which provided, inter alia, for substantial desegregation of the Montgomery County school system for the 1967-68 school year.

2. On June 15, 1967, the defendants submitted a report on the anticipated faculty assignments for the 1967-68

school year by school and race. That report shows that of the 804 white teachers assigned for the 1967-68 school year, 5 are anticipated to be teaching in two Negro high schools, and that of 554 Negro teachers, 5 are anticipated to be teaching in two predominantly white high schools.

3. From June 15, 1967 through August 15, 1967, only three additional faculty assignments have been made which have the effect of desegregating the faculties in the Montgomery County public school system.

4. This motion is based upon the pleadings, evidence and reports on file in this case and upon evidence to be adduced at the hearing on this motion.

JOHN DOAR
Assistant Attorney General

REUBEN ORTENBERG
Attorney
Department of Justice

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Certificate of Service (omitted in printing)

Plaintiffs' Joining in Motion

(Filed August 30, 1967)

U. S. DISTRICT COURT

FOR MIDDLE DISTRICT OF ALABAMA
NORTH DIVISION

Now comes the Plaintiffs in the above entitled cause and join with the United States in praying for the relief set forth in its motion filed on August 17, 1967.

Respectfully submitted,

GRAY & SEAY

Certificate of Service (omitted in printing)

Answer to Motion

(Filed September 1, 1967)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Now comes the Montgomery County Board of Education, et al., defendants in the above entitled cause, and in response to the motion for further relief heretofore filed by the Amicus Curiae, United States of America, respectfully represents and shows unto the Court as follows:

1. The defendants, pursuant to the order of the Court dated June 1, 1967, did, on June 15, 1967, file a report with the Court showing that for the 1967-68 school year the Montgomery County Board of Education has employed three white teachers to predominantly Negro Booker Washington High School; two white teachers to the predominantly Negro Carver High School; three Negro teachers to the predominantly white Lanier High School; and two Negro teachers to the predominantly white Lee High School. A copy of this said report is attached hereto and made a part hereof as "Exhibit A" as if set forth fully herein.

A copy of this said report was served on the United States of America and on the attorneys for the plaintiff by mailing a copy of same to them on June 15, 1967, postage prepaid.

2. These defendants further state to the Court that they have diligently endeavored to accomplish faculty and staff desegregation of the Montgomery County School System.

These defendants aver that in view of all circumstances

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and since the 1967-68 school year is the first year for faculty and staff desegregation in the County, the report as filed does show a substantial and good faith compliance with this Court's order.

3. These defendants further show that in further efforts to comply in good faith with the orders of this Court, the defendants have taken additional positive and affirmative steps to accomplish desegregation of faculty by employing three white speech teachers to work in all elementary schools regardless of race or color. That all substitute teachers are listed alphabetically regardless of race or color and these lists will be furnished to all principals of all schools. The average number of substitute teachers employed in the system on a school day is 31.

4. These defendants aver that they have accomplished all of the desegregation of faculty as is possible for the 1967-68 school year; that faculty reassignment or re-employment at this time would be impossible, consistent with the best interests of the education of all of the children of this County, regardless of race.

5. These defendants aver that neither the United States of America, Amicus Curiae, nor the plaintiffs, made any objection to the report heretofore filed on June 15, 1967, until the date of August 17, 1967, approximately two weeks prior to the opening of school and two months after said report was filed. Defendants further aver that students will commence attendance for the 1967-68 school term on September 7, 1967, and faculty meetings in the school system with room assignments and equipment assignments have already been made.

6. The defendants further aver that the placement of faculty and the employment of teachers is of the utmost importance to the school system and that in accomplishment of this the most diligent care must be exercised. These

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defendants aver and state to the Court that they have employed teachers and made assignments, as referred to hereinabove, in a bona fide effort to comply with the Court order and to maintain a quality school system in the best interests of all school children of this County, regardless of race or color.

WHEREFORE, PREMISES CONSIDERED, these defendants pray that the Court will dismiss the motion for further relief or, in the alternative, will deny the relief therein prayed for.

HILL, ROBISON, BELSER AND PHELPS
Attorneys for the Defendant

Certificate of Service (omitted in printing)

EXHIBIT "A"

Montgomery Public Schools

Teaching Staff Assignments as of June 15, 1967

School	Negro	White	Total	Grades
Baldwin Jr. High		31	31	7-9
Bear		19	19	1-6
Bellinger Hill		8	8	1-6
Bellinger Jr. High		45	45	1-9
Billingslea	7		7	1-6
Booker Washington Elem.	17		17	1-6
Booker Washington Jr. High	30		30	7-9
Booker Washington Sr. High	32	3 (*1)	35	10-12
Capitol Heights Elem.		17	17	1-6
Capitol Heights Jr. High		35	35	7-9
Carver Elementary	24		24	1-6
Carver Jr. High	24		24	7-9
Carver Sr. High	53	2 (*2)	55	10-12
Catoma		9	9	1-6
Chilton		8	8	1-6
Chisholm		25	25	1-6
Cloverdale Jr. High		36	36	1-9
Daisy Lawrence	28		28	1-6
Dalraida		19	19	1-6

School	Negro	White	Total	Grades
Dannelly		23	23	1-6
Davis		22	22	1-6
Dunbar High	45		45	1-12
Fews	26		26	1-6
Flowers		25	25	1-6
Floyd Jr. High		44	44	1-9
Forest Avenue		11	11	1-6
George Washington High	46		46	1-12
Goode Street		8	8	1-6
Godwyn Jr. High		42	42	7-9
Hale	20		20	1-6
Harrison		23	23	1-6
Hayneville Road Jr. High	44		44	1-9
Head		17	17	1-6
Highland Avenue		13	13	1-6
Highland Gardens		23	23	1-6
Houston Hill	15		15	7-9
Johnson		24	24	1-6
Lanier	3 (*3)	102	105	10-12
Lee	2 (*4)	82	84	10-12
Loveless	44		44	1-9
McDavid	22		22	1-6
McIntyre Elem.	30		30	1-6
McIntyre Jr. High	7		7	7-9
MacMillan		13	13	1-6
Madison Park	10		10	1-6
Montgomery Co. High		19	19	1-12

School	Negro	White	Total	Grades
Morningview		17	17	1-6
Paterson	25		25	1-6
Pendar Street		21	21	1-6
Pike Road		7	7	1-9
Pine Level		3	3	1-6
Pintlala		8	8	1-9

*1 One teacher English, Grades 10, 11 and 12.
One teacher English, and Social Studies, Grades 10, 11 and 12.
One teacher Commercial Subjects, Grades 10, 11 and 12.

*2 One teacher Military Science, Grades 10, 11 and 12.
One teacher Social Studies, Grades 10, 11 and 12.

*3 One teacher Military Science, Grades 10, 11 and 12.
One teacher Commercial Subjects, Grades 10, 11 and 12.
One teacher Heath & Physical Education, Grades 10, 11 and 12.

*4 One teacher Commercial Subjects, Grades 10, 11 and 12.

2 ILLEGIBLE LINES—PLEASE SUPPLY

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Notice of Taking Discovery Deposition

(Filed January 30, 1968)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

To:

Fred D. Gray, Esq.
34 N. Perry Street
Montgomery, Alabama

Vaughn Hill Robison, Esq.
Hill, Robison, Belser & Phelps
P. O. Box 901
Montgomery, Alabama

PLEASE TAKE NOTICE that the United States, amicus curiae herein, will take the deposition, for the purpose of discovery, of Walter T. McKee, Superintendent of Education for Montgomery County, at 1:30 P.M. January 31, 1968 at the office of the Montgomery County Board of Education, 305 South Lawrence Street, Montgomery, Alabama. The deposition will continue from day to day until completed.

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You are invited to attend and cross-examine.

FRANK D. ALLEN, JR.
Attorney
U. S. Dept. of Justice

Certificate of Service (omitted in printing)

Further Answer to Motion

(Filed February 1, 1968)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Now comes the Montgomery County Board of Education, et al., the defendants in the above entitled cause and in further response to the motion for further relief heretofore filed on August 17, 1967, by the Amicus Curiae, the United States of America, respectfully represent and show unto the Court as follows:

1. That since the filing on September 1, 1967, of the defendants' answer to the said motion for further relief the defendants have employed seven replacement teachers which have been assigned to faculties in schools of this system which are attended by students predominantly of the opposite race. There is presently a total of thirty-two faculty employees teaching in schools predominantly of the opposite race.

2. That substitute teachers of an undetermined number have been employed during the 1967-68 term to teach in schools where students of the opposite race are predominant.

3. That Negro student teachers are practice teaching in the 1967-68 term in schools which are attended predominantly by white students.

4. These defendants aver that they have accomplished all of the desegregation of faculty that is possible for the 1967-68 school term; that insofar as possible they will continue in their efforts to further desegregate the faculty;

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that faculty reassignment or re-employment at this time would be impossible consistent with the best interest of the education of all of the children of this County regardless of race; that there are no promotions in any of the elementary or junior high schools in this system during the term; that there are no promotions from elementary to junior high school during a nine month term; that no new or additional grades are begun in elementary or junior high schools during a nine month term.

5. These defendants further state to the Court that they are diligently endeavoring to accomplish further faculty and staff desegregation in the Montgomery County School System for the 1968-69 school year; that in the 1968-69 school year there will be further faculty and staff desegregation in this County and that they are in good faith compliance with this Court's Order.

6. These defendants further aver that the placement of faculty and the employment of teachers is of the utmost importance to the school system and that in the accomplishment of this, the most diligent care must be exercised. These defendants aver that they have employed teachers and have made assignments in a bona fide effort to comply with this Court's Order to discharge the affirmative duty placed on them by law to desegregate the faculty of this school system and to maintain a quality school system in

the best interest of all children in this County, regardless of race or color.

WHEREFORE, these defendants pray that this Court will dismiss the motion for further relief or, in the alternative will deny the relief therein prayed for.

HILL, ROBISON, BELSER AND PHELPS
Attorneys for Defendants

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Certificate of Service (omitted in printing)

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Amicus Curiae Notice of Motion and Motion for Further Relief

(Filed February 7, 1968)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

To: *The Parties and the Attorney of Record for Each Party*

PLEASE TAKE NOTICE that at a time and place to be set by the Court, the United States, Amicus Curiae, will move the Court for an Order enjoining the defendants from:

1., Failing to fill each vacancy hereafter occurring in the Montgomery County School System with a teacher or staff member whose race is in the minority at the school to which he is assigned unless the racial composition of the faculty and staff at that school no longer contributes toward identifying the school as being intended for a predominance of one race and unless no qualified teacher of the minority race is available.

2. Failing to establish a comprehensive program to provide for desegregation of student teachers and substitute teachers.

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3. Failing to assign faculty and staff to the Jefferson Davis High School and to the two new elementary schools so that the faculties and staffs are substantially deseg-

regated and the schools will not be identifiable as intended for a preponderance of one race.

4. Failing to take affirmative action to correct the impression they have created that the proposed Jefferson Davis High School is intended predominantly for white students and failing to schedule athletic contests in such a way as to disestablish the dual school system.

5. Failing to report to this Court every three months, the first report to be due April 1, 1968, the steps taken to comply with the Order of this Court herein sought.

As grounds for the motion, the United States submits:

1. On September 5, 1967, a hearing was had in this Court on the United States' Motion for Further Relief. No ruling pursuant to that hearing has yet been made.

2. Since September 1, 1967, defendants have had 22 vacancies occur in the faculties of the Montgomery County School System, and 31 new teachers have been hired.

3. Of the 31 new teachers hired since September 1, 1967 school year, seven have been placed in schools where their race is in the minority.

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4. During the first grading period, defendants had approximately 150 student teachers working in the Montgomery County System, none of whom were assigned to a position where their race was in the minority.

5. For the second grading period, defendants will have approximately the same number of student teachers assigned to the various schools in the system. Four Negro

student teachers have been assigned to predominantly white schools.

6. The defendants have not taken adequate steps to insure that substitute teachers are utilized in a manner to disestablish the dual school system.

7. A principal, three coaches, and a band director, all of whom are white, have been assigned to Jefferson Davis High School, which is still under construction and will be in operation beginning in the fall of 1968.

8. The defendants and their agents have caused an athletic schedule to be prepared for the proposed Jefferson Davis High School that includes contests only with predominantly white schools. Similarly, they have caused athletic schedules to be prepared for other schools in the Montgomery system that have predominantly white schools competing only with other predominantly white schools and that have predominantly Negro schools competing only with other predominantly Negro schools.

9. The defendants and their agents have taken other steps that have caused students and parents who will be

exercising choice forms to understand that the proposed Jefferson Davis High School is intended to be predominantly white. These steps include contacts for financial support and the release of publicity about the proposed school.

10. Defendants anticipate that two new elementary schools will begin operations in the fall of 1968.

11. Unless enjoined by this Court, defendants will continue to assign new teachers, student teachers, and substitute teachers on a racially segregated basis and will cause new schools to be opened in 1968 to perpetuate the dual school system.

This motion will be based on the pleadings, papers, and evidence on file in this case, the deposition of Walter T. McKee, and the testimony and exhibits to be adduced at the hearing of said motion.

Respectfully submitted,

CHARLES QUAINTANCE
FRANK ALLEN
Attorneys
Department of Justice

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Certificate of Service (omitted in printing)

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Plaintiffs' Motion

(Filed February 9, 1968)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Now come the Plaintiffs in the above entitled cause and join with the United States in praying for the relief set forth in its Motion filed in this Court on February 7, 1968. The Plaintiffs further move the Court for the following additional relief:

1. That the Defendants be enjoined from failing and refusing to provide transportation for students who qualify therefor to the following proposed new schools:

Jefferson Davis High School,
Southlawn Elementary School, and
Peter Crump Elementary School.

2. That the Defendants be enjoined from transporting students beyond schools in which their race is a minority to other more distant schools in which their race is a majority.

GRAY, SEAY, LANGFORD & PRYOR

Stipulation

(Filed February 17, 1968)

The parties by their attorneys stipulate as follows:

1. Attachment A, which is attached hereto and made a part hereof, lists the names of persons available for substitute teaching assignments in Montgomery County in 1967-68;

2. Those persons whose names on Attachment A are preceded by the letter W are white persons; and

3. Those persons whose names on Attachment A are preceded by the letter N are Negroes.

Executed this 17th day of February, 1968.

JOSEPH D. PHILLIPS
Attorney for the Defendants

FRED D. GRAY
Attorney for the Plaintiffs

CHARLES QUAINTANCE
Attorney for the United States

MONTGOMERY PUBLIC SCHOOLS
City and County
Montgomery, Alabama

SUBSTITUTE TEACHER LIST

1967-68

NAME*	TELEPHONE	ADDRESS	SCHOOLS, GRADES, OR SUBJECTS	COLLEGE WORK
W ADAIR, Bessie P.	265-3352	1131 Magnolia Curve	Elem. & Jr. High	None
W ALLEN, Eva Greer	272-4471	3450 Biltmore	Elementary	2 yrs.
N BALDWIN, Emma A.	265-1850	1430 Rushing St.	Elementary	4 yrs.
W BARNES, Marie G.	262-8158	115 Arlington Rd.	LANIER only	5 yrs.
W BAXTER, Virginia L.	265-5621 Ex. 3494	Maxwell AFB, 311 Center Dr.	Soc. St., French, & Elementary	4 yrs.
W BEECHER, Peggy Sudduth	272-5409	615 Sir Michael Dr.	Elementary	4 yrs.
N BELL, Fannie Idell (Ramer-562-3606)		Rt. 2 Box 59, Ramer, Ala.	Elem.	4 yrs.
N BIRCH, Arnetta Dabney	265-9327	620 Cedar St. #M	Elementary	4 yrs.
N BIVINS, Lillie Shuford	264-0113	1242 Cleveland Ave.	Elementary	4 yrs.
W BONDOIN, Natala B.	262-7622	904 Felder	Upper Elem. & Jr. High	2½ yrs.
W BUSBY, Anna U.	264-3023	3553 Cloverdale Rd.	Jr.,Sr.,High & Elem.	3½ yrs.
N BYRDSONG, Rosa Lee	265-5971	2552 Airwood Dr.	Elementary	4 yrs.
W CAMP, Frances P.	263-6153	2630 N. Fernway	RETARDED CHILDREN'S SCH.	4 yrs.
N CAMPBELL, Rosa Lett	263-0713	718 Sutter St.	Elementary	4 yrs.
W CARROLL, Sara Nell G.	272-3376	3607 Willow Lane Dr.	Elementary	1½ yrs.
N CARTER, Betty J.	262-8533	3041 Milton Rd.	Elem. & High (Music)	4 yrs.
N CARTER, Ruby Lee	265-6829	1013 Pelham St.	Elementary	4 yrs.
W CARTER, Sybil Davis	272-0570	919 Frontenac Court	FLOWERS only	1 yr.
W CHACONAS, Georgianna K.	265-5621 Ex. 6498	Qtrs. 614-B Maxwell AFB	Elem. & High	2 yrs.
W CHANCEY, Beulah H. (Grady-584-7548)		Rt. 2 Box 164 Grady, Ala.	Ramer, Pine Level, Goodwyn & Retarded Children's	4 yrs.
W COE, Lucy E.	264-7617	3024 Crawford St.	Elem. & Jr. High	1 yr.
N COOLEY, Frankie Armstead	264-6249	758 S. Holt St.	Elementary	4 yrs.
W COULTER, Florence K.	265-7783	958 Ridgecrest St.	Elementary	None
N CURLEY, Eliza A. J.	263-0408	940 Adeline St.	Elementary	4 yrs.
N DALTON, Johnnie Pat	262-4247	1434 Cleveland Ave.	Elementary	4 yrs.
N DANDY, Dolores L.	265-6620	1326 Tuttle Ave.	Home Ec. & Science	4 yrs.
W DeKING, Marilyn S.	265-0167	3739 S. Court St.	ART, Soc. St., Spanish, English & Elem.	4 yrs.
W DELLINGER, Mary Melra	272-1471	871 Greg Dr.	English	4 yrs.
W DeRAMUS, Evelyn K.	264-9730	521 Japonica St.	Elementary	2 yrs.
W DERICKSON, Myrtis M.	262-0281	3235 LeBron	Elementary	2 yrs.
W DeVANE, Haroll M.	288-9858	Rt. 1 Box 136-A Letohatchee, Ala.	Soc. St., Typing, Eng., & Upper Elem.	4 yrs.
W DIAMOND, Boots Carroll	272-2131	165 Kent St.	Elem. & Commerce	4 yrs.
N DUNCOMBE, Juanita Deloris	263-2753	628 Woodrow St.	Elementary	4 yrs.
W DUNLAP, Lennie F.	262-5813	154 Arlington Rd.	Elementary	2 yrs.
W EICH, Lorah Smith	264-7986	1841 Hill Hedge Dr.	French, Span., art, Eng., sci., Elem.	4 yrs.
W ELROD, Jimmie G.	265-6511	3179 Norman Bride Rd.	Elementary	2 yrs.
N EVANS, Janie Hood	264-4972	2661 W. Edgemont Ave.	Elementary	4 yrs.
W FIELDS, Mary	262-0925	3460 Wilmington Rd.	Eng., sci., commerce, soc. st., & Elem.	2 yrs.
N FLOWERS, Ethel Myers	288-4044	Rt. 1 Box 43 Sprague, Ala.	Elementary	4 yrs.
W FRASER, Nina Rust	264-1804	857 Portland Ave.	LANIER & LEE (English)	5 yrs.

* In reporting Substitute Teachers on your pay roll, please use names exactly as listed above.

W GOOCHER, Allison C.	288-9451	4262 Sunshine Drive	Social Studies	4 yrs.
W GORDON, Sandra H.	265-9181	2800-A Brewton St.	Soc. St. & English	4 yrs.
N GREEN, Elizabeth Pullom	263-0672	720 Clarke St.	Elementary	4 yrs.
N GREEN, Ernestine J.	265-3644	636 Maggie St.	Elementary	4 yrs.
N GREENE, Willetta J.	263-1932	3223 Suwanee Dr.	Elementary	4 yrs.
W GRISWOLD, Deborah A.	265-6546	3219 E. Fernway Dr.	CHILDREN'S CENTER	4 yrs.
W GUEST, Fay Stephenson	263-2735	3576 Cloverdale Rd.	Elementary	4 yrs.
W HALL, Ann J.	272-4475	236 Kiefer Dr.	EAST Montgomery only: S.S., Eng. & Commerce	4 yrs.
N HARRIS, Myla S.	263-2095	3115 Mobile Dr.	Elementary	4 yrs.
N HARRISON, Elizabeth	264-6745	2024 Mill St.	Elementary	4 yrs.
N HARRISON, Patricia Yvonne	262-0933	742 S. Ripley St.	Elementary	4 yrs.
W HAWK, Ginger S. (LaPine-537-4342)		LaPine, Ala.	MONTG. COUNTY HIGH & PINTLALA only	2 yrs.
W HEUSTESS, Jessie R.	262-2062	1443 Adrian Lane	LANIER only	5 yrs.
W HICKS, Dorothy C.	262-1539	36 W. Vandiver	Elem. & Jr. High	2 yrs.
W HINCK, Judith F.	272-3823	751 N. Georgetown Dr.	Elem.	4 yrs.
N HINSON, Florence I.	264-1356	735 Erskine St.	Elementary	4 yrs.
N HOBDLY, Lollar Pearl	272-7986	Rt. 5 Box 303-Y	Elem. & Soc. St.	4 yrs.
W HOLLEY, Lucile F.	262-0085	11 Courtland Dr.	Elementary	4 yrs.
W HOLLEY, Maggett H.	272-5518	2725 Biltmore Ave.	Elem.	2 yrs.
N HUDSON, Jessie Mae	265-5143	2436 Lower Totumpka Rd.	Elementary	4 yrs.
W HUGHES, Louise C.	288-2252	2645 Baldwin Brook Dr.	Elem. & High Eng. & Soc. St.	2½ yrs.
W HUGHES, Mertie C.	262-4379	321 N. Capitol Parkway	Elementary	2 yrs.
N HUNTER, Ganola N.	263-5687	3344 Roundtree Rd.	Elementary	4 yrs.
W HYDE, Harriet H.	265-3693	1827 Norman Bridge Rd.	P. E. & Soc. St.	4 yrs.
N JACKSON, Lalia Logan	264-0126	1023 E. Washington	Elem. & Jr. High	4 yrs.
W JAMES, Edith Blythe	264-6609	2707 Newport Rd.	Jr. & Sr. High Soc. St. & Upper Elem.	4 yrs.
W JAMES, Nancy C.	272-1231	3926 Johnstown Dr.	LEE HIGH only	4 yrs.
N JENKINS, Corene R.	269-1141	668 Mill St.	Elementary	4 yrs.
W JENNINGS, Bettye L.	272-6163	3621 Princess Ann	EAST Montg.: Eng., Music, Typing, & Elem.	2 yrs.
W JERNIGAN, Nelda H.	262-8974	1875 Gillespie Dr.	DANNELLY only	2 yrs.
W JOHNSON, Iberia Pierce	272-0304	Rt. 5 Box 283-A	HEAD, DALRAIDA, & FLOYERS	4 yrs.
W JOHNSON, Sarah Jane	263-6584	36 Woodall Circle	RETARDED CHILDREN'S & CHILDREN'S CENTER	1 yr.
W JONES, Dorothy Leona	269-2723	3085 Highland Ave.	Elem. & High	4 yrs.
N JONES, Lillie Mary	264-7355	1810 Michael St.	Elementary	4 yrs.
N JORDAN, Eunice Sylvene	272-3329	Mt. Meigs, Ala.	Elem. & Jr. High	4 yrs.
W LANEY, Dorothy Y.	272-6789	2737 Sumter	Elementary	2½ yrs.
W LEACH, Marybeth Jones	262-0154	3742 Narrow Lane Road	Upper Elem., Eng., S.S., Home Ec., French & P.E.	
W LEE, Bobbie E.	272-4354	4341 Donovan Dr.	Elem. & Jr. High	2 yrs.
W LINDLEY, Eleanor M.	263-5353	1887 Robison Hill Rd.	Elementary	2½ yrs.
W LINDSEY, Hilda L.	265-4390	3685 Southmont Dr.	BELLINGRATH, HARRISON, & DAVIS	2½ yrs.
W McATEER, Betty S.	288-2453	3025 Princeton Rd.	JOHNSON, BEAR, DANNELLY & FLOYD	4 yrs.
W McCLURKIN, Alma M.	272-7949	Pike Road, Ala.	Eng., French, Span., Soc. St. & Elem.	4 yrs.
W McCORD, Sarah C.	262-2471	825 Park Ave.	BELLINGRATH, LANIER & FLOYD	4 yrs.
W McCORD, Susie S.	263-3766	59 Garden St.	EAST MONTGOMERY Elem.	1 yr.
N McDADE, Elizabeth A.	262-3005	425 Yougono Curve	Soc. St. & Home Ec.	4 yrs.
W McDONELL, Evelyn G.	262-3614	1831 James Ave.	EAST MONTGOMERY, LANIER, & BALDWIN	1 yr.
N McGINNIS, Mary L.	263-9059	326 Moehan St.	ENGLISH & MUSIC	4 yrs.
W McMORTER, Margaret P.	272-6644	3769 Vaross Ferry Rd.	EAST MONTGOMERY - Jr. High & Elem.	3 yrs.
W MALLOY, Hilda B.	265-8998	3447 Southview Ave.	Elementary	4 yrs.
W MARTIN, Carolyn Baker	288-0195	2210 Woodley Rd.	Elem. & Jr. High	5 yrs.
MARTIN, Virginia Scott	272-7016	St. 2 Pike Rd., Ala.	Upper Elem.	3 yrs.
[illegible] Juan	265-[illegible]52	500 [illegible] Courts	Elementary	4 yrs.
N MEADOWS, Elizabeth Hazzard	264-5470	1137 Oak St.	Elementary	4 yrs.
W MELTON, Edna C.	264-0116	2816 Spann Place	Elementary	2 yrs.
W METCALFE Elizabeth B.	264-7214	3534 Cambridge Rd	JOHNSON, DANNELLY BEAR FLOYD & FOREST AVE.	4 yrs.

W MIDDLETON, Ethel D.	265-3671	2722 Oxford Drive	BEAR & DANNELLY	5 yrs.
W MILLIS, Louise Alston	272-2642	1215 Noremac Road	Elem., Jr. & Sr. High	4 yrs.
W MOODY, Frances Galloway	264-5528	2258 Narrow Lane Rd.	Jr. High Art & Elem.	3 yrs.
W MOORE, Ella Mae	272-1835	3529 Dalraida Court	EAST MONTGOMERY: Elem. & High	1½ yrs.
N MOORE, Wilma A.	265-5129	3311 Mobile Dr.	Elementary	4 yrs.
W NESSMITH, Mary R.	265-7823	3011 Boxwood Dr.	Eng., S.S., & French	4 yrs.
W O'DONNELL, Bonnie H.	264-2990	1823 Palmetto St.	Elementary	2 yrs.
W PALMER, Hazel H.	262-7918	2435 LeRuth Ave.	DANNELLY, JOHNSON, FOREST AVE., MORNINGVIEW	2 yrs.
W PARKER, Mary A.	272-4635	46 Marlborough	Elem. or Jr. High	2 yrs.
W PARKS, Barbara H.	263-2807	2192 Rosemont Dr.	Jr. High English	4 yrs.
N PEARSON, Helen Evans	263-2078	3048 Tyler Road	Elementary	4 yrs.
N PERSON, Susie M.	262-8729	3359 E. Tuskegee Circle	Elem. & Soc. St.	4 yrs.
W PETRANKA, Mary L.	263-1215	617 Thorn Place	Elem. & High	4 yrs.
N PIERCE, Mary L. B.	264-0063	3511 Mobile Dr.	Soc. St. & Eng.	4 yrs.
N PORTER, Annie Lee	263-3609	2745 Vandy Court	Elementary	4 yrs.
N PORTIS, Cleo D.	263-9913	1328 Tuttle St.	Science & Math	4 yrs.
W RAWLS, Ruby Tompkins (Ramer-584-7767)		Rt. 1, Ramer, Ala.	RAMER & PINE LEVEL	None
W RAY, Geraldine H.	265-1737	423 Fourth St., Boylston	CHISHOLM & HIGHLAND GARDENS	
N RELF, Cleona Gray	263-3561	4037 Oak Street	Elementary	4 yrs.
W RICE, Sue	262-0502	908 Cloverdale Road	Jr. High Latin & English & Elem.	2 yrs.
W RICHARDSON, Elizabeth S.	262-3788	3316 Montezuma Rd.	Elementary	2½ yrs.
W RICKER, Iva Nelle	288-1528	2034 Beverly Dr.	Upper Elem.	5 yrs.
W ROBERTSON, Sara Booker	272-7686	Pike Road, Alabama	Elementary	1½ yrs.
N ROSS, Lillie Belle	263-6056	1225 Hutchinson St.	Elementary	4 yrs.
W RUSHING, Elise Terry	272-5186	3739 Honeysuckle Court	Soc. St., Music, Primary	2 "
N SAMS, Eva	264-1549	1229 Hutchinson St.	Elementary	4 yrs.
W SAMUELS, Valeria Ward	264-0515	3365 Wilmington Rd.	Ele. & High	2 yrs.
W SCHAUM, Mary T.	263-3877	926 Cloverdale Rd.	SOUTH MONTGOMERY	2½ yrs.
W SCOTT, Bettie Hill	265-8485	641 E. Fairview Ave.	Primary	4 yrs.
W SMITH, Eugonia M.	265-5930	3424 Somerville Dr.	Elem., Home Ec., P.E., & Soc. St.	2 yrs.
N SMITH, Jean E.	264-6224	814 S. Union St.	Elem. & Soc. St.	4 yrs.
W SMITH, Judith A.	272-6256	615 Joryne Drive	Elementary	2 yrs.
N SMITH, Mabel Williams	264-9869	3047 Milton Rd.	Elementary	4 yrs.
W SMITH, Sylvia L. (Ramer - 562-3515)		Rt. 2, Ramer, Ala.	MONTG. COUNTY HIGH	None
W STRINGFELLOW, Anna Matthews	263-1970	1241 S. Hull St.	SOUTH MONTGOMERY Elem.	3 yrs.
W TANKERSLEY, Corrie Hill	262-4692	2321 W. Cloverdale Park	Algebra, Latin, Soc. St. & Elem.	4 yrs.
W TEMPSKE, Mary Beatrice	272-1976	3739 Marie Cook Dr.	Elem. & Jr. High social studies	4 yrs.
N THOMAS, Addie Lucille	264-9890	926 Cleveland Ave.	Soc. St. & English	4 yrs.
N THOMAS, Gertrude J.	265-1416	2016 Council St.	Elem. & Home Ec.	4 yrs.
W VAUGHAN, Olivia B.	265-1122	615 Hubbard St.	CLOVERDALE only	2 yrs.
W WAGGONER, Nell H.	264-5678	4003 Narrow Lane Road	Primary	4 yrs.
W WARNER, Janet	264-2663	Rt. 2 Box 417	Elementary	2 yrs.
N WASHINGTON, Glover Ivy	263-9105	661 Emerson St.	Elementary	4 yrs.
N WASHINGTON, Nettie D.	264-0302	611 W. Dixie Dr.	Elementary	4 yrs.
N WEBB, Annie G.	265-0602	566 N. Union Circle	Elementary	4 yrs.
W WEISHEIT, Carolyn Adella	265-1117	3515 S. Court St.	BELLINGRATH & HARRISON	2 yrs.
W WILFERTH, Myldred E.	272-5243	3568 Prince George Dr.	Elementary	2 yrs.
W WILLIAMS, Gloria Bingham	288-4644 or 288-4655	Sprague, Alabama	PINTLALA & MONTGOMERY COUNTY HIGH	none
W WILLIAMS, Willette H.	265-1030	460 Heustess St.	P.E., Hist., Eng., & Elementary	none
W WILLIAMSON, Margaret R.	262-4053	431 Martha St.	Elementary	1 yr.
N WILSON, Addie Marie	262-8216	1500 S. Hull St.	Elementary	4 yrs.
N WILSON, Lillian Olivia	269-4201	1232 Payne St.	Elementary	4 yrs.
W WINDSOR, Mary Ellen	272-2460	3519 Dalraida Court	EAST MONTG. - Elem.	1 yr.
W JOHNSON, Helen Maxine	272-3601	2940 Biltmore	Elementary	3 yrs.
N ROBERTSON, Brenda Joyce	264-1917	1409-B Wilcox St	Elementary	4 yrs.

MONTGOMERY PUBLIC SCHOOLS
City and County
Montgomery, Alabama

Superintendent's Office

September 14, 1967

SUPPLEMENTARY SUBSTITUTE LIST

To All Principals:

Please add the persons listed below to your Substitute Teacher List, and let me remind you that you are to call ONLY those people whose names are sent to you from this office! DO NOT call anyone who is not on the official lists sent to you or about whom you have not been contacted by this office. Substitutes are required to have on file in our office health certificates, teacher's certificates, chest X-rays, and social security names and numbers. All of these matters must be cleared in this office before their names can be sent out to you; otherwise, complications arise in our office as well as the bookkeeping department at pay roll time.

Please cooperate with us in this matter, and we will try to send out supplementary substitute lists monthly. If you know of anyone who would like to be placed on the list, send them to see me and we will clear those items and get the names out to you as soon as possible.

Sincerely yours,

W. S. Garrett

W. S. Garrett
Associate Superintendent

WSG/zhd

	NAME*	TELEPHONE	ADDRESS	SCHOOLS, GRADES, OR SUBJECTS	COLLEGE WORK
W	ALLEN, Donna Mai	262-7477	44 Ogden Road	Library, Spanish, Eng.	5 yrs.
W	ARCHER, Hellen Cannon	264-3812	1912 Johnson St.	LEE HIGH only	3 yrs.
W	BALKEMA, Mary H.	272-3282	330 Hillside Rd.	Jr. & Sr. High: Sci., Math, & Soc. St.	4 yrs.
W	DENNIS, Lou Ellen	263-3961	3469 Warrenton Rd.	SOUTH MONTG.(Primary)	3 yrs.
W	DeVANE, Jo Anne	288-9868	Rt. 1 Letohatchee	So. Montg. & County (Elem., commerce & Home Ec.)	1 yr.
W	DUNMAN, Frances Stephenson	265-6107	3557 Gaylord Pl.	Elementary	2 yrs.
W	GARNER, Jane Helms	265-4122	3412 Richmond Rd.	Eng. & Soc. St.	4 yrs.
W	GUY, Sharon S.	272-5299	801 Joryne Dr.	Eng., French, Home Ec., Hist. & Art	4 yrs.
W	HUDDLESTON, Grace M.	264-2556	2202 Allendale Rd.	Eng., Hist., or Elem.	4 yrs.
W	JOHNSON, Alva Simpson	265-2793	2728 Fisk Rd.	SO. MONTG.: Elem. or Hi.	2 yrs.
W	LONG, Josefine Maria	288-5421	1531 Flamingo Lane	Elementary	3 yrs.
W	MacMILLAN, Anne Jones	288-4818	2648 Oxford Dr.	SO. MONTG.: Elem. & Jr.	4 yrs.
W	McCRACKEN, Dorothy S.	272-4098	1208 Karen Rd.	E. Montg.: Eng., Hist. & Elem.	4 yrs.
W	McLAMB, Martha L.	262-0108	3199 E. Fernway Dr.	Elementary	2½ yrs.
N	MADISON, Katie J.	264-3511	324 Springhill Ave.	Elementary	4 yrs.
N	MANSELL, Harnethia Naomia	262-6770	3204 McElvy	Elementary	4 yrs.
W	MORRISON, Ellon Young	265-9685	547 S. Perry St.	Elem. & Jr. High	4 yrs.
W	MOSS, Judith Ann	264-9821	403 S. Perry St.	Upper Elementary	4 yrs.
W	PELHAM, Kittie K.	264-8589	1602 S. Hull St.	Jr. & Sr. Hi & Elem.	4 yrs.
W	SPENCER, MaryAnn Eleanor	262-7010 or 272-7474	1828 Vaughn Lane	Eng., French, & Elementary	3 yrs.
W	WHITFIELD, Virginia Rath	262-2866	2137 Campbell Rd.	Eng., Speech, S.S.	4 yrs.
W	WHORTON, Jean Elliott	584-7713	Pine Level, Ala.	RAMER & PINE LEVEL	1 yr.
W	WILLIAMSON, Juno Dale	272-4706	1209 Cottondale Rd.	Jr. Hi: Speech & Elem.	2 yrs.
[illegible]	WILSON, Mamie Jo Ellington	285-4362	Rt. 1 Millbrook	Elem.	4 yrs.
[illegible]	WILSON, Mary Jo	272-5068	3361 Archerfield Rd.	EAST MONTG. (Elem. & Jr. Hi)	none

CHANGE Social Security name of Marilyn S. Deking on list to: MARILYN SCHMITT DeKING

* SOCIAL SECURITY NAMES to be used on pay roll

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MONTGOMERY PUBLIC SCHOOLS
City and County
Montgomery, Alabama

Superintendent's Office

November 1, 1967

SUPPLEMENTARY SUBSTITUTE LIST

To All Principals:

Please add the persons whose names are listed below to your Substitute Teacher List. These are their Social Security Names and are to be used on your pay roll as listed:

Sincerely yours,

W. S. Garrett

W. S. Garrett
Associate Superintendent

WSG/rhd

	NAME	TELEPHONE	ADDRESS	SCHOOLS, GRADES, OR SUBJECTS	COLLEGE WORK
W	BALDWIN, Ann Sessoms	272-5462	3531 Milan Drive	French or English	4 yrs.
N	BELLAMY, Laticia S.	265-4975	1209 Payne Street	Home Ec., Sci., & Elem.	4 "
W	CHRISTENBERRY, Mary E.	288-0736	731 Alamo Drive	Soc. Studies & Upper Elem.	4 "
W	CONNELL, Annie Lee	262-8203	714 Terrace Ave.	English & Spanish	4 "
W	GORDON, Beppy L.	288-0747	Rt. 4 Box 85	Math & Law	4 "
W	JENKINS, Suzy	288-2767	1204 E. Audubon Rd.	LEE ONLY	4 "
W	KILLIAN, Frank, Jr.	272-5635	3043 Ashley Ave.	Mathematics	B.S. & M.S
W	KILLOUGH, Elizabeth Anne	272-0402	1037 Grenada Dr.	Eng., Spanish, & Elementary	---
W	LOVAN, Ruth E.	263-6514	3346 Montezuma Rd.	Math, Soc. Studies, & Elem.	4 yrs.
W	LYNCH, Margaret Mathes	272-2455	3707 Honeysuckle Court	Home Ec., Sci., S.S., Eng., & Elem.	4 yrs.
W	RAGSDALE, Carol Land	264-8588	22 E. Fairview Ave.	Music, Commerce, Elem.	BME & MA
W	RALEY, Mary Dupree	288-4828	Rt. 1 Box 341-D	High School & Elem.	4 yrs.
W	ROBINSON, Barbara Drum	272-3352	117 E. Salem Dr.	Sci., History & Elem.	4 "
N	SANDERS, Catherine Maudest	263-0166	1260 S. Holt St.	Elementary	4 "
W	SERWIN, Harlynn M.	288-2851	1727 Bancroft	Sci., Soc. St. & Elem.	4 "
W	STUART, Lucy	262-2031	155 N. Haardt Dr.	Elementary	4 "
N	TALLEY, Missie Doll	263-5314	2142 Stella St.	Elementary	5 "
W	TUCKER, Shirley Gaither	264-9660	542 Clayton St.	CHILTON only	----
W	VARTANIAN, Margaret White	264-6971	3507 Princeton Rd.	Eng. & Soc. St.	4 "

Dorothy Y. Laney has requested that she receive calls from junior high schools as well as elementary schools.

Lou Ellen Dennis has requested that she receive calls from all elementary schools instead of being limited to South Montgomery as previously listed.

NEW ADDRESS & PHONE NO. for Edna C. Melton, who is already on the Substitute List.
300 Carol Villa
Phone: 272-0989

PLEASE REMOVE the following names from your Substitute Teacher Lists:

ELIZABETH PULLOM GREEN
DEBORAH A. GRISWOLD
HELEN MAXINE JOHNSON
ELIZABETH [illegible] JONES

MONTGOMERY PUBLIC SCHOOLS
City and County
Montgomery, Alabama

Superintendent's Office

December 1, 1967

SUPPLEMENTARY SUBSTITUTE LIST

To All Principals:

Please add the following persons to your Substitute Teacher List. These are their Social Security Names and are to be used on your pay roll as listed:

Sincerely yours,

W. S. Garrett

W. S. Garrett
Associate Superintendent

WSG/rhd

W	DANIELS, Jean L.	264-8880	1424 Deer Street	Elementary	4 yrs.
W	DRY, Charlotte Lola	264-5839	434 S. Panama St.	Home Ec., Sco, & Elem.	4 yrs.
W	HUXFORD, Linda Teague	288-2709	1125 Buckingham Dr.	Eng., Home Ec., & Elem.	4 yrs.
W	POPE, Betty	265-2503	700 Terrace Ave.	Elem. & High	4 yrs.
N	PRINCE, Rosa Mae	265-9185	3354 Loveless Curve	Elementary	4 yrs.
W	SEXTON, Anna Louise	265-6818	1931 Speigle St.	Elementary	1 yr.
N	SHARPE, Algia C.	264-3681	2637 W. Edgemont	Elementary	4 yrs.
W	TOMLINSON, Virginia M.	272-6643	3797 Royal Crest Dr.	Elem. & High: Eng. & S.S.	4 yrs.
N	WILLIAMS, Eliza Larkin	272-0974	4105 Bienville Rd.	Elementary	4 yrs.

REMOVE from List:

Nancy C. James
Wilda B. Malloy
Harnethia Naomia Mansell
Carolyn Baker Martin

MONTGOMERY PUBLIC SCHOOLS
City and County
Montgomery, Alabama

Superintendent's Office

January 1, 1967

SUPPLEMENTARY SUBSTITUTE LIST

To all Principals:

Please add the following persons to your Substitute Teacher List. These are their Social Security Names and are to be used on your pay roll as listed:

Sincerely yours,

W. S. Garrett

W. S. Garrett
Associate Superintendent

WSG/rhd

W	BEAN, Carolyn B.	265-3165	3980 Dallas Dr.	Soc. Studies & Elem.	3 yrs.
W	BOZEMAN, Sara Charles	265-4643	1138 Rosedale	EAST Montgomery - Elem.	4 yrs.
N	DAVIS, Arthur M.	263-9346	405 McKinne St.	Eng., French, & S.S.	4 yrs.
W	DePREIST, Imogene	272-0683	1949 Cottingham Dr.	Elementary	4 yrs.
W	FOSTER, Marcia W.	264-1481	2813 Spann Place	Eng., Commerce, & Elem.	---
W	GOODWYN, Mary H.	263-7475	2537 McGehee Rd.	BEAR SCHOOL ONLY	
W	JOHNSON, Annie Grace	272-3847	139 Holliday Drive	Elementary	----
	KURTZMAN, Elaine	272-7490 Ex. 4146	Gunter Air Force Base Qtrs. 204-C	Math & Soc. Studies	5 yrs.
W	MITCHELL, Sandra F.	272-6049	47 Holliday Dr.	Elem. & High School	2 yrs.
W	MORRIS, Barbara G.	272-2601	3538 Wareingwood	Home Ec., Eng., Hist., Shorthand, Typing	4 yrs.
W	RIDOLPHI, Elizabeth H.	263-9021	2256 Rosemont Dr.	Elem. (Primary)	½ yr.
W	SEWELL, Virginia F.	288-0032	1013 Lynwood Dr.	Elem. (Primary)	4 yrs.
N	WILLIAMS, Lloyd G., Jr.	263-9917	3034 Caffey Dr., Apt. K	Soc. St. & English	4 yrs.

REMOVE from list:

Linda Teague Huxford
Patricia S. Norman

MONTGOMERY PUBLIC SCHOOLS
City and County
Montgomery, Alabama

Superintendent's Office — February 1, 1968

SUPPLEMENTARY SUBSTITUTE LIST

To all Principals:

Please add the following persons to your Substitute Teacher List. These are their Social Security Names and are to be used on your pay roll as listed:

Sincerely yours,

W. S. Garrett
Associate Superintendent

WSG/rhd

W	ADAMS, Louise	265-3031	443 S. Highland Court		Elementary	4 yrs.
W	ADAMS, Patricia S.	272-2500	785 Duval Dr.		DAVIS SCHOOL	4 yrs.
N	ASHLEY, Jo Ann Young	263-9693	705 N. Union Circle		Elementary	4 yrs
W	BALLARD, Ida T.	265-8127	3238 Montezuma Rd.		Elem & P.E.	4 yrs.
W	BERRY, Linda	262-0668	1500 Gilmer Ave.		Elem.	4 yrs.
W	CHAPPELL, Charles Wilson	262-2978	1932 James Ave.		Soc. St., Sci., Eng.	1 yr.
W	CROSS, Willie Mack (Mrs.)	272-4593	3542 Wareingwood		Elementary	None
W	DeBRAY, Jananne Booth	265-4923	3547 Norman Bridge Rd.		Eng., Speech, S.S., Upper Elem.	4 yrs.
W	DUFFEY, Barbara C.	288-4684	Rt. 1 Box 275-B	&	Elementary	4 yrs.
W	EVANS, Valeria M.	262-8724	Rt. 4 Box 89-D	EAST MONTG.,	Elem. & Jr. Hi	None
N	FREEMAN, Evergreen Walker	263-5132	1009 Lake St.		Home Ec. & Soc. St.	4 yrs.
N	FULLER, Mary C.	272-7194	Rt. 3 Box 426		Home Ec. & Soc. St. & Elem.	4 yrs.
W	GRAY, Yvonne S.	288-6172	Rt. 1 Box 266		Elementary	None
W	GREENLEE, Ruth T.	265-0867	856 E. Patton Ave.		Elem. or High	None
W	JOHNSON, Nancy M.	263-7322	22-B Southmont Court		Elementary	4 yrs.
W	KELLY, Rosa R.	264-5175	121-A E. Patton Ave.	SOUTH MONTG.,	Primary	
W	MORRIS, Jane Owen	265-9102	1018 Augusta St.		Eng., Home Ec., & Upper Elem.	4
W	NORTON, Rebecca Black	262-1820	2543 College St.		Elementary	2 yrs.
W	REYNOLDS, Jesse Preston	269-4684	3700 Mobile Rd.		Sci., speech, Eng. & Soc. St.	4 yrs.
N	RUSTON, Maxine	26[illegible]525	2620 Rutland St.		Chemistry, biology, & Math	4 yrs.
W	SCHOFIELD, Charles Malcolm	263-1478	415 Fourth St.		Soc. St. & economics	4 yrs.
W	STANFORD, Brenda L.	263-1883	1704 S. Perry St.		Elementary	4 yrs.
W	VICKERY, Mary N. H.	263-2905	1704 S. Court St.		Eng. & Soc. St.	4 yrs.
W	WATERS, Myrtle Elise	269-4296	3207 E. Fernway Dr.		Elem., Sci., Eng., Jr. Hi	none
N	WINSTON, Frankie Madison	272-4525	Rt. 3 Box 404		Elementary	4 yrs.

CHANGE IN ADDRESS & TELEPHONE NO.:

CHRISTENBERRY, Mary E. 3151 Woodfern Dr., New Telephone: 265-5808

PLEASE REMOVE THE FOLLOWING PERSONS FROM YOUR SUBSTITUTE LIST:

SHARON S. GUY
ANNE JONES MacMILLAN
JUDITH ANN MOSS
MARIE JO ELLINGTON WILSON

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Memorandum Opinion

(Filed February 24, 1968)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

This cause is now submitted upon the motions of the United States filed August 17, 1967 and February 7, 1968, in both of which the United States requested this Court to require defendants to take further steps designed to disestablish the dual school system in Montgomery County, Alabama. Each of these motions seeks further faculty desegregation and the motion of February 7, 1968, asks this Court to require defendants to cease operation of their athletic program on a racially segregated basis and to take other steps designed to insure that certain new schools that have been and are being constructed as a part of the Montgomery County School System are operated on a desegregated basis. The plaintiffs join the United States in each of said motions.

This Court conducted a hearing on the Government's motion of August 17, 1967, in September, 1967. No formal findings or conclusions were made at that time by reason of the fact that the 1967-68 school year had already commenced, and the matter was therefore held in abeyance. On February 9, 1968, a hearing was conducted on the Government's second motion and the motion of the plaintiffs filed the same date wherein the plaintiffs seek more specific relief concerning transportation to the new schools.

Upon consideration of the evidence and the several exhibits thereto, this Court now makes the appropriate findings of fact and conclusions of law, embodying the same in this memorandum opinion. The original decree requiring desegregation of the public schools in Montgomery County, Alabama, was entered by this Court on July 31, 1964. After making appropriate findings and conclusions to the effect

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that the Montgomery County Board of Education was operating a segregated school system based upon race, this Court entered an injunction that enjoined the defendants from failing to provide public school education for Negroes, and other members of their class, in a school or schools that were not operated on a racially segregated basis, and from failing to take immediate steps, to be effective for the school term commencing September, 1964, to desegregate the 1st, 10th, 11th and 12th grades in the public schools of Montgomery County, Alabama. In this decree, this Court approved a freedom-of-choice plan that had been proposed by the defendants as a means for discharging the affirmative duty placed upon them. *Brown* v. *Board of Education of Topeka,* 347 U. S. 483 (1954), and *Brown* v. *Board of Education of Topeka,* 349 U. S. 294 (1955). On March 22, 1966, this Court by formal order required the Montgomery County Board of Education to file a more formal and comprehensive plan for desegregation of the public school system in Montgomery County. This plan provided for complete desegregation of the schools for each grade in each school commencing with the September, 1967 school term; the plan also provided with regard to services, facilities, activities and programs:

> A student shall have full access to all services, facilities, activities, and programs (including transporta-

tion, athletics, and other extracurricular activities) that may be conducted or sponsored by, or affiliated with the schools of the system. A student attending school for the first time on a desegregated basis may not be subject to any disqualification or waiting period for participation in activities and programs, including athletics, which might otherwise apply because he is a transfer student.

Further, the plan provided with regard to faculty and staff:

> Race or color will henceforth not be a factor in the hiring, assignment, reassignment, promotion, demotion, or dismissal of teachers and other professional staff, with the exception that assignments shall be made in order to eliminate the effects of past discrimination. Teachers, principals, and staff members will be assigned to schools so that the faculty and staff is not composed of members of one race.
>
> In the recruitment and employment of teachers and other professional personnel, all applicants or other prospective employees will be informed that Montgomery County operates a racially integrated school system and that members of its staff are subject to assignment in the best interest of the system and without regard to the race or color of the particular employee.
>
> The Superintendent of Schools and his staff will take affirmative steps to solicit and encourage teachers presently employed to accept transfers to schools in which the majority of the faculty members are of a race different from that of the teacher to be transferred.

Teachers and other professional staff will not be dismissed, demoted, or passed over for retention, promotion, or rehiring on the ground of race or color. In any instance, where one or more teachers or other professional staff members are to be displaced as a result of desegregation or school closings, they shall be transferred to any position in the system where there is a vacancy for which they are qualified.

At the time this Court entered its order in July, 1964, there were in attendance approximately 15,000 Negro children and approximately 25,000 white children in the Montgomery County School System. The system was completely segregated by reason of race. No faculty desegregation was ordered until the commencement of the 1967 school year.[1] The evidence now presented reflects that during the current school year the student population continues to be about the same as in 1964 and there are now approximately 550 Negroes attending, through the freedom-of-choice procedure, traditionally white schools. No white children are attending traditionally Negro schools.

[1] The order made and entered in this case on March 22, 1966, required the Montgomery County Board of Education to commence the process of desegregating the faculty and professional staffs commencing with the school year 1966-67. However, on August 16, 1966, in the Mobile, Alabama school case of *Birdie Mae Davis, et al.* v. *Board of School Commissioners of Mobile County, et al.*, 364 F. 2d 896, the United States Court of Appeals for the Fifth Circuit allowed the Mobile, Alabama County Board of Education until the school year 1967-68 to end its policy of hiring and assigning teachers and staff according to race. On August 18, 1966, this Court entered an order reciting, "Uniformity, as well as fairness, requires this Court upon its own motion . . . to amend its order of March 22, 1966, to the extent that the Montgomery County School Board of Education be allowed until the school year of 1967-68 to end this present policy of hiring and assigning teachers and other school personnel according to race."

As of February 9, 1968, 32 classroom teachers in this system were teaching pupils in schools that are predominantly of the opposite race. Defendants employ approximately 550 Negro teachers and approximately 815 white teachers in the system. Practically all the faculty desegregation in the system has occurred in the high schools. While there is some faculty desegregation in the elementary schools in the system, it is extremely small. There has been very little, if any, faculty desegregation in the schools located outside the City of Montgomery.

Since the order of this Court of June 1, 1967, defendants have assigned or transferred approximately 75 new teachers to faculties where their race was in the majority. Since the opening of school in September, 1967, defendants have hired approximately 32 new teachers—26 white and 6 Negro. Of the 26 new white teachers, only six or seven have been placed in predominantly Negro schools. All six Negroes were assigned to predominantly Negro schools. The evidence further reflects that the defendants have failed to take any appropriate steps to insure that

substitute teachers are placed on a nonracial basis. No Negro has yet been a substitute teacher in a traditionally white school in Montgomery County. Negro substitutes were used over 1,500 times in Negro schools during the first semester of the 1967-68 school year. During the same period, white substitute teachers were employed over 2,000 times—only 33 of them in traditionally Negro schools. There are approximately 162 white substitute teachers and 63 Negro substitute teachers available for use in the Montgomery County School System. Twenty-eight of the white substitute teachers whose names are on this list have,

with defendants' permission, limited themselves to working only in predominantly white schools.

Defendants have adopted no adequate program for the assignment of student teachers on a desegregated basis. None of the approximately 150 student teachers used in the Montgomery County School System in the fall of 1967 were assigned to schools predominantly of the opposite race. Four Negro student teachers have very recently been assigned to predominantly white schools. There has been no faculty desegregation in the night schools operated by the Montgomery County School System.

The evidence does not reflect any real administrative problems involved in immediately desegregating the substitute teachers, the student teachers, the night school faculties, and in the evolvement of a really legally adequate program for the substantial desegregation of the faculties of all schools in the system commencing with the school year of 1968-69.

The evidence in this case reflects that the athletic programs are an integral part of the operation of the public schools in the Montgomery County School System. The Alabama High School Athletic Association is an association made up of approximately 357 Alabama high schools traditionally maintained for white students and the Alabama Interscholastic Athletic Association is an association made up only of Alabama high schools traditionally maintained for Negro students. Each of these athletic associations has adopted rules for the scheduling of athletic contests by its members which have the effect of penalizing member schools if they play athletic contests with schools predominantly of the opposite race. The manner in which these associations accomplish this is through the promulgation of a rule to the effect that if any member school plays

a nonmember school, it is subject to suspension or penalty. Thus the Montgomery County Board of Education, acting through its various school principals and coaching staffs, has allowed its traditionally white schools and its tradi-

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tionally Negro schools to become members of the white and Negro associations, respectively, thereby placing them under the restrictive rules of these associations. Furthermore, the evidence reflects that the defendants through their agents—the principals and coaching staffs—have adopted a policy of scheduling interscholastic athletic contests for its traditionally white schools only with other traditionally white schools, and for its traditionally Negro schools, only with other traditionally Negro schools. The evidence in this case is clear that this manner of operating the athletic programs has had and continues to have the effect of influencing the choice of students within the system.

The evidence further reflects that the defendants have continued to construct new schools and expand some existing schools; certainly, there is nothing wrong with this except that the construction of the new schools with proposed limited capacities geared to the estimated white community needs and located in predominantly white neighborhoods and the expansion of the existing schools located in predominantly Negro neighborhoods violate both the spirit and the letter of the desegregation plan for the Montgomery County School System. Examples of this are the construction of the Jefferson Davis High School, the Peter Crump Elementary School and the Southlawn Elementary School —all in predominantly white neighborhoods—and the expansion of Hayneville Road School and the Carver High

School, both in predominantly Negro neighborhoods. The location of these schools and their proposed capacities cause the effect of this construction and expansion to perpetuate the dual school system based upon race in the Montgomery County School System.

As to transportation, the defendants have failed to eliminate the bus routes where there exists overlapping and duplication based upon race. Thus the defendants have continued to perpetuate the dual school system through their transportation system. The defendants in designating three new schools located in predominantly white neighborhoods, viz., Jefferson Davis High, Peter Crump Elementary and Southlawn Elementary, as "nontransported" schools (schools to which no transportation is provided) are also attempting to further perpetuate the dual school system.

One of the most aggravating courses of conduct on the part of the defendants and their agents and employees relates to the new Jefferson Davis High School to be located in the City of Montgomery and operated commencing with the school year 1968-69. The defendants in locating this

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school placed it in a predominantly white section of Montgomery. The evidence reflects that in determining the capacity of the school they approximated the number of white students residing in the general vicinity and constructed the school accordingly; they have adopted a school name and a school crest that are designed to create the impression that it is to be a predominantly white school; they have hired a principal, three coaches and a band director, all of whom are white; they have actively engaged in a fund-raising campaign for athletic and band programs

only through white persons in the community; they have contacted only predominantly white schools for the scheduling of athletic events and they have made tentative arrangements to join the Alabama High School Athletic Association—the white association. Extensive publicity has been released concerning the white faculty members and the football schedule with all white schools. Discussion of the athletic program has been held by the new school officials only with white athletes. The dissemination of information about spring football practice in pamphlet form has been made by the school staff only to white persons.

All of this means that the defendants have failed to discharge the affirmative duty the law places upon them to eliminate the operation of a dual school system. Under such circumstances this Court considers it necessary and entirely appropriate to establish now more specific requirements governing minimum amounts of progress in the future in these several areas. In establishing these rules, it should be emphasized that strong consideration is given to the ratio of white to Negro students; however, in view of the fact that the plaintiffs and the United States have as of February 21, 1968, filed a motion to supplement the March 22, 1967, order of the three-judge court in *Lee, et al.* v. *Macon County Board of Education, et al.*, 267 F. Supp. 458, in the area of school athletic programs, this Court will not at this time make any further specific findings, conclusions or order concerning the dual athletic program operated by the Montgomery County School System and will not at this time outline any steps that the defendants may be required to take in order to eliminate such practice. This phase of the matter as now presented will be reserved pending hearing and disposition of the motion in *Lee, et al.*

v. *Macon County Board of Education, et al.*, which is presently scheduled for a hearing March 9, 1968.

The manner in which the defendants have constructed new schools, the location and proposed capacity of these

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schools, and the manner in which the defendants have expanded Negro schools and the location of these Negro schools make it clear that the effect of these new constructions and the effect of the expansions have been designed to perpetuate, and have the effect of perpetuating, the dual school system in the Montgomery County schools. Furthermore, the operation of the school bus routes as presently operated by the defendants continues to violate the Fourteenth Amendment of the Constitution. Because of these factors this Court is under a duty and an obligation to outline and specify certain affirmative steps that must be taken by the defendants to eliminate the dual school system based upon race and to overcome the effects of certain efforts that have been made, as above outlined, to perpetuate this dual school system.

In implementing the requirements of this Court's orders heretofore made in this case and the supplemental requirements outlined herein and in the attached supplemental desegregation plan, the Montgomery County School Board, the individual members thereof, and particularly the principals of the several schools should be guided by three *caveats:*

First, the law will not tolerate any further undue delay in the desegregation of the public school systems. It has been almost fourteen years since school boards were placed under an affirmative duty to disestablish their dual school systems based upon race. *Brown* v. *Board of Education of Topeka, supra.* The Courts have recently—particularly in

the Fifth Circuit—emphatically stated that no further delays in the desegregation process would be allowed. This was recognized and reaffirmed by the three-judge court in *Lee* v. *Macon, supra,* in its order of April 15, 1967 (unreported), when it was stated:

> Further delay in the desegregation of Alabama public schools is inconsistent with existing law. The Supreme Court of the United States in *Goss* v. *Board of Education,* 373 U. S. 683 (1963), stated: "Delays in desegregating schools systems are no longer tolerable." See also *Calhoun* v. *Latimer,* 377 U. S. 263; *Watson* v. *City of Memphis,* 373 U. S. 526, and *Bradley* v. *School Board of City of Richmond,* 382 U. S. 103 (1965). The law is clear that state authorities are "duty bound to devote every effort toward initiating desegregation and bringing about the elimination of racial discrimination in the public school system." *Cooper* v. *Aaron,* 358 U. S. 1, 7. Following this philosophy, the United States Court of Appeals for the Fifth Circuit has refused to permit delay in this area. *Davis* v. *Board of School Commissioners of Mobile County, Alabama,* 322 F. 2d 356 (1963); *Singleton* v. *Jackson Municipal Separate School District,* 348 F. 2d 729 (1965); *United States* v. *Wilcox County Board of Education,* 366 F. 2d 769 (1966).

Second, in the area of desegregating the faculties and staffs in the several schools in the system, the defendants may not justify or excuse any further delay upon the

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ground that some of the teachers are reluctant to teach in schools predominantly of the opposite race. Again, the

controlling legal principle in connection with this phase of the problem was announced by the three-judge court in *Lee* v. *Macon, supra,* in its order of June 14, 1967 (unreported), wherein the Court stated that desegregation of facilities and staffs must be accomplished "either by inducing voluntary transfers by teachers, the filling of vacancies, or, if they cannot achieve faculty desegregation by such means, then by the assignment and transfer of teachers from one school to the other."

Third, that unless the "freedom-of-choice" plan is more effectively and less dilatorily used by the defendants in this case, this Court will have no alternative except to order some other plan used. Caution in this area of the problem was expressed by the three-judge court in *Lee* v. *Macon, supra,* in its order of March 22, 1967, when it stated:

> Invariably in this area of our country the "freedom-of-choice" plan has been chosen by the courts and the school systems themselves as the method to effectuate the requirements of the Fourteenth Amendment in the field of desegregation of public educational facilities. This is the plan which this Court will require—for the time being—these defendant officials to implement throughout the State of Alabama.[27] This Court recognizes that in the freedom-of-choice plan there are many administrative complexities. It may be that these administrative problems will make some other method advisable in the future. It may well be that the freedom-of-choice method of desegregation will not fully

[27] The reasons are obvious why school officials have not chosen other plans such as the "neighborhood school" plan, for under such a plan white students would be immediately required to attend Negro schools located in their neighborhoods.

and completely disestablish the dual public school system based upon race.[28] However, for the time being, provided that all of the factors designed to influence and having the effect of influencing choice be eliminated, the freedom-of-choice plan will be put into effect upon a state-wide basis. It should be emphasized that, if choice influencing factors are not eliminated, freedom of choice is a fantasy. A "freedom-of-choice" plan ordered by a court or adopted by school authorities is not an end in itself; it is but a means to an end. The plan must operate in such a manner as to meet the constitutional mandate of the Fourteenth Amendment. As was stated in the concurring opinion in *Bradley* v. *School Board*, 345 F. 2d 310, 323:

> Affirmative action means more than telling those who have long been deprived of freedom of educational opportunity, "you now have a choice." In many instances the choice will not be meaningful unless the administrators are willing to bestow extra effort and expense to bring the deprived pupils up to the level where they can avail themselves of the choice in fact as well as in theory . . . . The district judge must determine whether the means exist for the exercise of a choice that is truly free and not merely pro forma.

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[28] The United States Supreme Court has not yet ruled on the freedom-of-choice method of ending racial segregation in the field of public education. However, *Goss* v. *Board of Education*, 373 U.S. 688 (1963), has been cited as support for such a plan. See *Bradley* v. *School Board*, 345 F. 2d 310, 318 (4th Cir. 1965).

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Several "freedom-of-choice" plans for desegregating dual school systems based upon race have recently been found

as "not operating in a constitutionally acceptable manner." *Coppedge* v. *Franklin County Board of Education* (E. D. N. D. Aug. 1967), 273 F. Supp. 289, and *Moses* v. *Washington Parish School Board* (E. D. La., Oct. 19, 1967), 276 F. Supp. 834.

In accordance with the foregoing, it is the ORDER, JUDGMENT and DECREE of this Court that the defendants, their agents, officers, employees and successors, and all those in active concert or participation with them, shall adopt and implement the attached supplement to the desegregation plan herein ordered on June 1, 1967.

This Court specifically retains jurisdiction of this cause.

Done, this the 24th day of February, 1968.

FRANK M. JOHNSON, JR.
United States District Judge

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SUPPLEMENT TO DESEGREGATION PLAN

I. Faculty and Staff

A. *Statement of Objective.*

In achieving the objective of the school system, that the pattern of teacher assignments to any particular school shall not be identifiable as tailored for a heavy concentration of either Negro or white pupils in the school, the school board will be guided by the ratio of Negro to white faculty members in the school system as a whole.

The school board will accomplish faculty desegregation by hiring and assigning faculty members so that in each school the ratio of white to Negro faculty members is substantially the same as it is throughout the system. At present, the ratio is approximately 3 to 2. This will be accomplished in accordance with the schedule set out below.

B. *Schedule for Faculty Desegregation.*

1. *1968-69.* At every school with fewer than 12 teachers, the board will have at least two full-time teachers whose race is different from the race of the majority of the faculty and staff members at the school.

At every school with 12 or more teachers, the race of at least one of every six faculty and staff members will be different from the race of the majority of the faculty and staff members at the school. This Court will reserve, for the time being, other specific faculty and staff desegregation requirements for future years.

C. *Means of Accomplishment.*

If the school board is unable to achieve faculty desegregation by inducing voluntary transfers or by filling va-

cancies, then it will do so by the assignment and transfer of teachers from one school to another.

D. *Substitute Teachers.*

Commencing March 1, 1968, the ratio of the number of days taught by white substitute teachers to the number of days taught by Negro substitute teachers at each school during each semester will be substantially the same as the ratio of white substitute teachers to Negro substitute teachers on the list of substitute teachers at the beginning of the semester.

Commencing with the 1968-69 school year, the board will not use an individual as a substitute teacher in the Montgomery Public Schools if he will consent to substitute only

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at predominantly white schools or only at predominantly Negro schools.

E. *Student Teachers.*

Commencing March 1, 1968, the ratio of white to Negro student teachers each semester in each school that uses student teachers will be substantially the same as the ratio of white and Negro student teachers throughout the system.

F. *Night Schools.*

Commencing June 1, 1968, the ratio of white to Negro faculty members at each night school will be substantially the same as the ratio of white to Negro faculty members throughout the night-school program.

II. New Construction

The school board will obtain approval from the State Superintendent of Education prior to letting contracts for or proceeding with the construction of any new school or any additions to an existing school. The State Superintendent will, upon receipt of such proposals, take appropriate action on said proposals as required by the March 22, 1967, decree entered in *Lee, et al.* v. *Macon County Board of Education, et al.*, 267 F. Supp. 458, 470-472, 480-481.

III. Transportation

The school board will adopt nondiscriminatory bus routes and criteria governing the availability of bus transportation to students. Race will not be a basis for assigning students to school buses, and overlapping and duplicative bus routes based on race will be eliminated. By June 1, 1968, the school board will file with the Court the criteria it has adopted and a map or maps of bus routes for the 1968-69 school year. Along with the map, the school board will file a report indicating for each bus in its system, the number of students by race that the bus is expected to transport, the capacity of the bus, the number of miles the bus is expected to travel one way, and the school or schools the bus will serve. The board will serve the United States, as amicus curiae, with copies of the criteria, the report, and the map or maps.

IV. Jefferson Davis High School, Peter Crump School, and Southlawn School

The school board will take affirmative action to eradicate the effect of the efforts it and its employees have made to

create the impression throughout the school system that
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Jefferson Davis High School, Peter Crump Elementary School and Southlawn Elementary School are to be used primarily by white students. The action will include, but not be limited to, the following steps:

A. *Letter to Eligible Students.*

By March 1, 1968, the school board will send to every student presently enrolled in grades 9, 10 and 11 in the public schools of Montgomery County a letter such as that set forth in Attachment A to this supplementary plan. A copy of the information sheet on choice forms and spring football practice, such as has heretofore been distributed to white students and parents, will be enclosed with each letter addressed to a male student.

B. *Visits to Schools.*

In the company of either the principal or a coach previously assigned to Jefferson Davis High School, that school's new coach will visit each high school and junior high school in Montgomery. They will inform the male students in grades 9, 10 and 11 at those schools of the rules concerning their eligibility to participate in athletics at Jefferson Davis High School. They will also inform the athletes when and where spring football practice is to begin for the new high school and of the procedures they should follow in order to participate. They will also make themselves available to answer any questions these students may have about Jefferson Davis High School.

C. *Transportation.*

The school board will, on the choice forms, offer to provide transportation to Jefferson Davis High School, Peter Crump Elementary School and Southlawn Elementary School, until further order of this Court. The choice forms will indicate that transportation is to be provided to those schools. The school board will provide transportation to each student who chooses Jefferson Davis High School and who lives outside the City of Montgomery and more than two miles from the school and who lives nearer Jefferson Davis High School than either Lee or Lanier High School, in the absence of compelling circumstances approved by the Court on the school board's motion.

D. *Honoring Choices.*

The school board will honor the choice of each Negro student who chooses to attend Jefferson Davis High School during the 1968-69 school year, in the absence of compelling circumstances approved by the Court on the school board's motion.

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V. Reports

The school board will report to the Court every three months, beginning March 15, 1968, the steps taken to comply with the desegregation plan ordered into effect June 1, 1967, and with this supplementary plan. Plaintiffs and the United States will be served with copies of the reports.

A. *Reports Previously Ordered.*

The school board will include in reports filed each June 15 the "report on choice period" and "report on faculty

assignments" described in Part VII of the plan ordered June 1, 1967. The report after school opening, also described in Part VII of the 1967 order, will become part of the reports filed each September 15.

B. *Faculty.*

1. *New teachers.* Each report filed will list each new teacher hired during the preceding three months and give his race and the school to which he is assigned.

2. *Substitute teachers.* Each report will list the number of days taught by substitute teachers, by race and by school, during the preceding three months, with the exception that the report filed March 15, 1968, will give this information only from the date of the order to which this supplementary plan is attached.

3. *Student teachers.* Each report will show by race the number of student teachers assigned during the preceding three months to each school having student teachers.

4. *Night schools.* Commencing June 15, 1968, each report will show by race the number of faculty and staff members assigned to the night program of each school having a night program.

C. *Transportation.*

Each report filed each year on September 15 will show, for each school bus, the number of students transported by race, the capacity of the bus, the number of miles it travels one way, and the school or schools it serves.

D. *Jefferson Davis High School and Other New Schools.*

The reports of March 15, 1968, June 15, 1968, and September 15, 1968 will show the steps (COPY ILLEGIBLE—PLEASE SUPPLY) to comply with Part V of this supplementary plan.

ATTACHMENT A

Montgomery Public Schools

Date

Dear Student:

We are sending you this letter to inform you that you are eligible to attend Jefferson Davis High School if you choose to do so. The choice period for Montgomery County schools begins March 1, 1968, and you or your parents will be receiving a choice form within the next few days.

Jefferson Davis High School is a new school in southeast Montgomery, to be opened in the fall of 1968. A senior high school only, it will have grades ten through twelve. Bus transportation to the school will be available to students who live outside the City of Montgomery and more than two miles from the school provided the student exercising such choice lives nearer Jefferson Davis than either Lee or Lanier High School.

We are in the process of forming a faculty and staff for the new school now. It will include a substantial number of persons of both races.

All students will be welcome to participate in all extra-curricular activities, including athletics and band, on the same basis and without regard to race. Spring football practice is scheduled to begin March 4, 1968, at Cloverdale Junior High School. Two days before that, Saturday, March 2, at 9:30 a.m., prospective players will be fitted for equipment at the Cloverdale Community Center in Montgomery. All athletes who choose to attend Jefferson

Davis High School are welcomed to participate. You should read the enclosed instruction sheet (sent only to male students) if you are interested.

Sincerely,

Superintendent
Montgomery Public Schools

Enclosure

Writ of Injunction Dated February 24, 1968

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

To the Above-Named Defendants and Each of Them:

TAKE NOTICE that you and each of you, your agents, officers, employees and successors, and all those in active concert or participation with you, who shall receive notice of this order, be and you are hereby ORDERED and ENJOINED as more fully set out in the Memorandum Opinion of this Honorable Court made and entered in this cause on this date, a copy of which is herewith served upon each of you.

This writ of injunction is issued in accordance with said Memorandum Opinion.

WITNESS my hand and the seal of this Court at Montgomery, Alabama, on this the 24th day of February, 1968.

R. C. DOBSON
Clerk of the United States
District Court for the
Middle District of Alabama

Notice of Appeal

(Filed February 27, 1968)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Notice is hereby given that the Montgomery County Board of Education, James W. Rutland, Fred Bear, Dr. J. Edward Walker, Isabelle Thomasson, Dr. Robert Parker and Walter T. McKee, defendants above named, hereby appeal to the United States Court of Appeals for the Fifth Circuit from the injunction and order of the United States District Court for the middle district of Alabama, Northern Division, entered in this action on the 24th day of February, 1968, as fully set forth in the memorandum opinion of the same date.

DONE, this the 27th day of February, 1968.

HILL, ROBISON, BELSER AND PHELPS
Attorneys for Appellant-Defendants

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Bond for Costs on Appeal

(Filed February 28, 1968)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

The defendants, Montgomery County Board of Education, James W. Rutland, Jr., Fred Bear, Dr. J. Edward Walker, Isabelle B. Thomasson and Dr. Robert Parker, Members of the Montgomery County Board of Education and Walter T. McKee, Superintendent of Education of Montgomery County, Alabama, as principals, having filed notice of appeal from the injunction and order of this Court entered February 24, 1968, to the United States Court of Appeals for the Fifth Circuit, herewith deposits in the Registry of the Court the sum of Two Hundred Fifty Dollars ($250.00), subject to the orders of the Court for security that said appellants shall prosecute their said appeal to effect; and that said appellants shall pay to plaintiffs-appellees all costs if the appeal is dismissed or the judgment affirmed, or such costs as the Appellate Court may award if the judgment is modified.

Dated this 28th day of February, 1968.

HILL, ROBISON, BELSER AND PHELPS
Attorneys for Appellants-Defendants

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Motion for Suspension and Stay of Injunction and Order During Pendency of Appeal

(Filed February 28, 1968)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Upon the proceedings heretofore had herein, motions, answers and other papers filed herein, and the affidavit of V. H. Robison sworn to February 28, 1968, as attached hereto and made a part hereof, the defendants, Montgomery County Board of Education, James W. Rutland, Jr., Fred Bear, Dr. J. Edward Walker, Isabelle B. Thomasson, and Dr. Robert Parker, Members of the Montgomery County Board of Education, and Walter T. McKee, Superintendent of Education of Montgomery County, Alabama, move the Court for an Order suspending the injunction and order heretofore entered against these defendants, pending the hearing and determination of these defendants' appeal to the United States Court of Appeals for the Fifth Circuit from the Order, Judgment and Decree of this Honorable Court entered February 24, 1968, and for such other and further relief as to the Court may seem proper.

HILL, ROBISON, BELSER AND PHELPS
Attorneys for Appellants-Defendants

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Certificate of Service (omitted in printing)

Affidavit in Support of Motion for Stay Pending Appeal

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Before me, Connie J. Knight, this day personally appeared V. H. Robison, who is known to me and who, being by me first duly sworn, doth depose and say as follows:

1. I am, as the attorney of record for the defendants Montgomery County Board of Education, James W. Rutland, Jr., Fred Bear, Dr. J. Edward Walker, Isabelle B. Thomasson, and Dr. Robert Parker, Members of the Montgomery County Board of Education, and Walter T. McKee, Superintendent of Education of Montgomery County, Alabama, fully familiar with the facts and proceedings in this action. I submit this affidavit in support of the annexed motion.

2. The order and injunction as issued by the United States District Court for the Middle District of Alabama on February 24, 1968 contains far reaching pronouncements of legal principles heretofore unprecedented in this District and this Circuit. These said pronouncements specifically include the order and directive to the above-named defendants to assign and to transfer faculty members, student teachers and substitute teachers in all schools in this system or from one school to another, according to a

fixed ratio based on race. The said order and injunction
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additionally include requirements and directives to these defendants that they give an affirmative racial preference to students for school attendance regardless of the proximity of the residence of the student to the school involved.

The said order further requires these defendants to notify all students throughout Montgomery County that they are eligible to attend the Jefferson Davis High School when such notice is inconsistent with other provisions of the said order and inconsistent with prior orders of the Court.

3. The above provisions of the Court's order dated February 24, 1968, as well as the compulsory transportation provisions thereof, the necessity for which not being supported by the evidence or the applicable law, will cause extensive student and procedural confusion and will disrupt orderly school administration in this County, and would result in students living in close proximity to the Jefferson Davis High School being subject to denial of admittance based on race, in preference to a student living as far as 25 or 30 miles away, and would subject the student living within 100 yards of the school to have to travel to another school more than two miles away.

4. On the 27th day of February, 1968, these defendants filed their notice of appeal from the said Order of February 24, 1968 to the United States Court of Appeals for the Fifth Circuit. The usual bond for costs on appeal was filed on February 28, 1968. A copy of this said notice of appeal, together with a copy of the said bond for costs on appeal are attached hereto as Exhibits 1 and 2.

5. It is respectfully submitted that during the pendency of this appeal, the injunctive provisions as set forth above and as contained in the order of the Court dated February 24, 1968, should be stayed, particularly in light of the many important legal questions and unresolved issues therein presented. In deponent's opinion, the decision as contained in the said order is in error, and is in conflict with the mandates of the Constitution of the United States, the Supreme Court of the United States, and the Fifth

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Circuit Court of Appeals. Because of the serious issues and important questions of law involved in this appeal, these defendants ought not to be subjected to the drastic effect of the said injunction pending appeal and ought not to be subjected pending appeal to the unreasonable administrative burdens resulting from the said injunction.

6. It is the opinion of your deponent that to subject this school system to the provisions of the injunction and order of the Court dated February 24, 1968, pending appeal, would result in irreparable injury to the school system of Montgomery County, even upon a reversal of the order.

WHEREFORE, for all of the foregoing reasons, these defendants respectfully pray that the provisions of the injunction and order of the Court dated February 24, 1968 be stayed during the pendency of this appeal.

V. H. ROBISON

(Sworn to February 28, 1968)

EXHIBIT 1 ANNEXED TO AFFIDAVIT

Notice of Appeal

Notice is hereby given that the Montgomery County Board of Education, James W. Rutland, Fred Bear, Dr. J. Edward Walker, Isabelle Thomasson, Dr. Robert Parker and Walter T. McKee, defendants above named, hereby appeal to the United States Court of Appeals for the Fifth Circuit from the injunction and order of the United States District Court for the middle district of Alabama, Northern Division, entered in this action on the 24th day of February, 1968, as fully set forth in the memorandum opinion of the same date.

Done, this the 27th day of February, 1968.

Hill, Robison, Belser and Phelps
Attorneys for Appellant-Defendants

EXHIBIT 2 ANNEXED TO AFFIDAVIT

Bond for Costs on Appeal

The defendants, Montgomery County Board of Education, James W. Rutland, Jr., Fred Bear, Dr. J. Edward Walker, Isabelle B. Thomasson and Dr. Robert Parker, Members of the Montgomery County Board of Education and Walter T. McKee, Superintendent of Education of Montgomery County, Alabama, as principals, having filed notice of appeal from the injunction and order of this Court entered February 24, 1968, to the United States Court of Appeals for the Fifth Circuit, herewith deposits in the Registry of the Court the sum of Two Hundred Fifty Dollars ($250.00), subject to the orders of the Court for security that said appellants shall prosecute their said appeal to effect; and that said appellants shall pay to plaintiffs-appellees all costs if the appeal is dismissed or the judgment affirmed, or such costs as the Appellate Court may award if the judgment is modified.

Dated this 28th day of February, 1968.

HILL, ROBISON, BELSER AND PHELPS
Attorneys for Appellant-Defendants

Order Amending Order and Injunction of February 24, 1968

(Filed March 2, 1968)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Upon consideration of the defendants' motion to stay the order and injunction made and entered herein on February 24, 1968, and the arguments in support thereof and in opposition thereto, it is considered appropriate, in order to accomplish the intent and purpose of this Court and in order to clarify the order and injunction in certain specific respects, to amend the order made and entered February 24, 1968.

Accordingly, it is Ordered that:

(1) That portion of Part IV, C, reading:

> The school board will provide transportation to each student who chooses Jefferson Davis High School and who lives outside the City of Montgomery and more than two miles from the school and who lives nearer Jefferson Davis High School than either Lee or Lanier High School, in the absence of compelling circumstances approved by the Court on the school board's motion,

is amended to read:

> The school board will provide transportation to each student who chooses Jefferson Davis High School and who lives outside the City of Montgomery and more than two miles from the school and who lives nearer Jefferson Davis High School than either Lee, Lanier, or Montgomery County High School, in the absence of compelling circumstances approved by the Court on the school board's motion.

(2) That portion of Part I, D, reading:

> Commencing March 1, 1968, the ratio of the number of days taught by white substitute teachers to the number of days taught by Negro substitute
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>
> teachers at each school during each semester will be substantially the same as the ratio of white substitute teachers to Negro substitute teachers on the list of substitute teachers at the beginning of the semester,

is amended to read:

> Commencing in September, 1968, with the 1968-69 school year, the ratio of the number of days taught by white substitute teachers to the number of days taught by Negro substitute teachers at each school during each semester will be substantially the same as the ratio of white substitute teachers to Negro substitute teachers on the list of substitute teachers at the beginning of the semester.

(3) That Part I, E, reading:

> Commencing March 1, 1968, the ratio of white to Negro student teachers each semester in each school that uses student teachers will be substantially the same as the ratio of white and Negro student teachers throughout the system,

is amended to read:

> Commencing in September, 1968, with the 1968-69 school year, the ratio of white to Negro student teachers each semester in each school that uses student teachers will be substantially the same as the ratio of white and Negro student teachers throughout the system.

(4) That portion of "Attachment A" to the injunction wherein it is stated:

> We are sending you this letter to inform you that you are eligible to attend Jefferson Davis High School if you choose to do so, -

is amended to read:

> We are sending you this letter to inform you that you are eligible to choose to attend Jefferson Davis High School if you desire to do so.

(5) That portion of Part I, B, reading:

> (1) *1968-69.* At every school with fewer than 12 teachers, the board will have at least two full-time teachers whose race is different from the race of the majority of the faculty and staff members at the school,

is amended to read:

> (1) *1968-69.* At every school with fewer than 12 teachers, the board will have at least one full-time teacher whose race is different from the race of the majority of the faculty and staff members at the school.

Done, this the 2nd day of March, 1968.

FRANK M. JOHNSON, JR.
United States District Judge

Order

(Filed March 2, 1968)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

The motion of the Montgomery County Board of Education filed herein on February 28, 1968, seeking an order suspending and staying the order and injunction of this Court made and entered in this case on February 24, 1968, is now presented. The submission is upon the motion, the record and the arguments of counsel.

From 1954—when the Supreme Court of the United States put the Montgomery County School Board and other school boards throughout this country on notice that they could not continue under the law to operate a dual school system based on color—until this Court found it necessary to enter an order on July 31, 1964, requiring commencement of the desegregation of the public schools in Montgomery County, Alabama, the Montgomery County Board of Education had taken no steps and had made no plans whatsoever to comply with the law of this land in the area of school desegregation. Even though ten years had passed when this matter came on for a hearing in 1964, the Montgomery County Board of Education was allowed, by this Court, to proceed with desegregation gradually, for the reason that it was realized that desegregation of the public schools cut across the social fabric of this community and that there would be both administrative and other prac-

tical problems for the board to cope with in order to comply with the law. In the first phase of accomplishing desegregation of the public schools—that is, the adoption of a plan, which has been referred to as "paper compliance"—the Board of Education proceeded with the minimum required by the Court, but in a manner that was acceptable. The

next stage of the desegregation process—the token desegregation of the schools and faculty—was also accomplished by the Board in an acceptable manner. However, we have reached the point where we must pass "tokenism," and the order that was entered in this case on February 24, 1968, is designed to accomplish this purpose. It was not designed to and was not intended to accomplish, and, if complied with, will not require more than the Supreme Court of the United States and the other appellate courts have held must be accomplished in order to desegregate a public school system.

The Board of Education in its motion to suspend and stay the order of this Court pending appeals—which may take a year or longer—emphasizes certain particular features of this Court's order of February 24, 1968. In some instances the emphasis is misplaced, and certainly that part of the motion which states that the February 24, 1968, order "contains far reaching pronouncements of legal principles heretofore unprecedented in this District and this Circuit" is incorrect—both in law and in fact. The Montgomery board complains about that part of the order requiring assignment and transfer of faculty members, student teachers and substitute teachers according to a fixed ratio based on race. While this Court did state in its order of February 24, 1968, that the "ultimate objective" in faculty desegregation should be, because of the ratio of white to

Negro faculty members in the school system, approximately 3 to 2, no schedule was set up to accomplish this "ultimate objective." The United States requested that a definite schedule be outlined for this accomplishment. However, gradualism has been found to work quite successfully in the past in this type case and particularly with the Montgomery County Board of Education, and gradualism is contemplated by this Court in accomplishing this "ultimate objective." What is actually required in the area of faculty desegregation in the high schools for the 1968-69 school year is very little—if any—more than the testimony reflects the school board planned without an additional court order. For instance, the school board presented testimony by Mr. Jack D. Rutland, the school principal for the new Jefferson Davis High School, to the effect that he contemplated hiring approximately 35 teachers, 7 of whom were to be Negroes. Thus, what is now ordered in the way of faculty desegregation as far as the Jefferson Davis High School is concerned is not as much as this Court was led to believe by the board's testimony would be accomplished by the board for the 1968-69 school year without any additional court order. This also applies to that part of the Court order as now amended requiring faculty desegregation for the other schools in the

system. Thus, in the area of faculty desegregation, nothing more is required of the Montgomery County School Board by the order of February 24, 1968, than the law requires as a minimum at this stage of the desegregation process and very little, if any, is required more than the school board, by its testimony, advised this Court it was going to do anyway.

The school board's complaint that the "ratio" requirement is unprecedented is inaccurate. In *Board of Educa-*

tion of Oklahoma City Public Schools v. *Dowell*, 375 F. 2d 158, 164 (10th Cir. 1967), it was observed that:

> Among the specific recommendations found in the report and *embraced by the trial court's order* were:
>
> • • •
>
> (4) Desegregation of all faculty personnel so that by *1970* the faculty ratio of whites to non-whites in each school will be the same as the faculty ratio of whites to non-whites in the entire school system, subject to a reasonable tolerance of approximately 10%. [Emphasis added, footnote omitted.]

The Fifth Circuit has not addressed itself to the means to be employed to fully achieve faculty desegregation. It has approved "racial criteria" in assignments "in fashioning an appropriate remedy to undo past discrimination." *United States* v. *Jefferson County Board of Education*, 372 F. 2d 836, 892 (5th Cir. 1967). The opinion in that case recognized that requiring a percentage ratio of teachers in the system was one method of meeting the problem:

> We anticipate that when district courts and this Court have gained more experience with faculty integration, the Court will be able to set forth standards more specifically than they are set forth in the decrees in the instant case. 372 F. 2d at 894.

In meeting this problem of faculty desegregation, other district courts have found it necessary to spell out in specific numbers the degree of faculty desegregation required where the local school boards have not proceeded with "deliberate speed." See *Coppedge* v. *Franklin County Board of Education*, 273 F. Supp. 289 (E.D. N.C. 1967); *Kier* v. *County School Board*, 249 F. Supp. 239 (W.D. Va. 1966).

The school board also complains as to that feature of the order relating to transportation. The order as now amended does not require the school board to do anything in the area of transportation of students that is not already required of practically every school in the State of Alabama and particularly each of the 99 schools subject to the order of the three-judge court in *Lee* v. *Macon County Board of Education*, 267 F. Supp. 458. As a matter of fact, that part of the order of this Court of February 24, 1968, that relates to transportation is almost a duplicate of what is required of other schools throughout the State of Alabama in the area of transportation.

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That particular feature of this Court's order of February 24, 1968, requiring transportation to the Jefferson Davis High School only requires transportation on the same basis that the school board is already providing it to Lee and Lanier High Schools. As was emphasized in the opinion and order of February 24, 1968, the Montgomery County School Board, according to the preponderance of the evidence, has set out to continue to operate—other than allowing token desegregation—a dual school system based upon race or color. The evidence clearly reflects that the manner in which this is to be accomplished is by the construction of schools with a limited capacity in virtually all-white neighborhoods. These capacities are not projected with the community growth in mind. The recent trend by the Montgomery board is to limit the capacity of these new schools to the present student population in these white enclaves. To perfect this plan, the school board has declared—before any choices are filed—that no transportation will be provided to the new Jefferson Davis High School, but that

transportation will be provided to every other high school in the county. The announced justification for this is that the school will be filled to capacity without transporting any students. Thus, the board will, because of the location of these new schools (Jefferson Davis, Southlawn Elementary and Peter Crump Elementary), when it refuses to honor the choices of students who do not live in these white neighborhoods, be successful in operating exclusively white schools for white communities. At the same time the board has been doing this, it has been enlarging, through expansion programs, the Negro schools; these expansion programs are based upon the projected student growth. Through this means, the "freedom-of-choice plan" will not accomplish desegregation of the school system in Montgomery County, Alabama. If this system is permitted, the Montgomery board will be using the freedom-of-choice plan for part of the school system and the neighborhood school plan for another part of the system. The freedom-of-choice plan will be operating for schools such as Lee High, Lanier High, Capitol Heights, Jr. High, Goodwyn Jr. High and others, and these schools will be desegregated. The Jefferson Davis High, Southlawn Elementary and Peter Crump Elementary Schools will be operated on a segregated basis —solely for the students residing in these exclusively white neighborhoods. The law will simply not permit the operation of such a system.

Furthermore, the evidence in this case is clear that the Jefferson Davis High School has been constructed in an exclusively white, predominantly high income-tax bracket community. To allow the Board of Education of Montgomery County, Alabama, to succeed in such a plan will

not only be to discriminate against the Negro children who

might elect to attend Jefferson Davis High School, but will also, according to some theories, discriminate against white children who attend desegregated schools.

This Court has ordered no "busing" of students other than requiring the Board of Education to provide exactly the same type transportation and upon exactly the same basis as that already provided by the board to students attending Lee and Lanier High Schools.

The last aspect of this Court's order that the board by its motion considers innovative to the point that the order should be stayed pending appeal is that pertaining to honoring the choices of Negro students who choose to attend Jefferson Davis High School during the 1968-69 school year. As was emphasized in the February 24, 1968, order, the school board, through its agents and by its own practices, had set about to create and had created the impression throughout the system that the new air-conditioned Jefferson Davis High School was to be an exclusively white school. No reasonable conclusion could be reached other than that this was for the purpose of deterring any Negro student in the system from choosing the Jefferson Davis school for the 1968-69 school year. The impression had been created that the school was not available—even though the Montgomery Board of Education is theoretically operating under a freedom-of-choice plan—for anyone except the 850 students of the exclusively white, high-income group that comprise the community where the new school is located. Fairness and justice requires that something be done to counteract this aggravated type of discrimination. The order emphasizes that this feature is a temporary measure—presently designed only to operate during the 1968-69 school year. The order further emphasizes that the choices of Negro students electing to attend Jefferson Davis High

School during the 1968-69 school year shall be honored *in the absence of compelling circumstances to be approved by this Court* on the school board's motion. As to this feature of the order—as it has throughout this litigation—reasonableness will govern the Court's action.

When motions to stay orders and injunctions are filed by litigants in any type of litigation, normal judicial procedure requires—as was done in this case—that the motion to stay be presented to the judge entering the order sought stayed. This invariably places the judge in the position of being required to review and appraise his own order; that is the situation now presented. This Court firmly believes that each and every provision and requirement in the order and injunction made and entered in this case on February 24, 1968, is the minimum the applicable law will

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allow under the peculiar facts and circumstances presented and that each and every feature of the order and injunction entered in this case on February 24, 1968, is not only authorized but required by the applicable law. However, it is not felt that any of the litigants will be prejudiced if certain features of the order to which the Montgomery County Board of Education most strenuously objects are stayed for a limited time so as to afford the Board of Education a reasonable time to secure appellate review of these features of the order and injunction.

The feature with regard to transportation *generally* (which is, as has been emphasized, required of practically every other school in the State of Alabama), the features as now amended with regard to the desegregation of the substitute teacher program, the student teacher program and the night school program, will not be stayed. These do not even approach new or novel areas. That part of the order requiring the approval of the State Superintendent

of Education prior to letting new contracts or expanding existing schools is not novel and will not be stayed. Those portions regarding reports to this Court are not novel and are not to be stayed. That provision of the injunction as now amended relating to faculty and staff set out in Part I, B, will be stayed for a limited period pending an appeal. That provision of the order set out in Part IV, C, relating to transportation to the Jefferson Davis High School, Peter Crump Elementary School and Southlawn Elementary School, will be stayed for a limited time pending appeal. That provision of the order set out in Part IV, D, relating to the honoring of the choices of Negro students who elect to attend Jefferson Davis High School during the 1968-69 school year, in the absence of compelling circumstances approved by the court on the school board's motion, will be stayed for a limited time pending appeal. The remainder of the order, as stated above, will not be stayed.

There is a provision authorizing accelerated appeals where time is of the essence. This Court considers that time is of the essence as to these features of the injunction now being stayed pending this appeal. There is no reason why the school board, through its attorneys, cannot secure an accelerated hearing of this matter before a panel of the United States Court of Appeals for the Fifth Circuit. In this connection, both the board's and government's attorneys have orally assured this Court that they will seek to expedite the appeal of this case and will, by reason of the time limitations involved, request the Court of Appeals to accelerate the hearing and submission of the case. This

will enable these features of the order to be reviewed by the appellate court prior to the commencement of the 1968-69 school year and will also, in the event one or more of

the provisions of the February 24, 1968, order are affirmed, enable the school board to put them into effect for the 1968-69 school year. This procedure will allow appellate review of the order before it is scheduled to be effective and will also keep the Negro plaintiffs from being prejudiced by any further undue delay. In the opinion of this Court, five months will be ample time to afford the school board, through its attorneys, an opportunity to secure an appellate review of these matters. Therefore, a stay order as to these features herein enumerated will be entered and the order of this Court of February 24, 1968, as to these enumerated features will not be effective until August 1, 1968. Unless the school board secures an appellate review prior to that date, this stay now being entered will expire on that date. The Clerk of this Court and the official court reporter for this district stand ready to assist the school board in the preparation of the record in this case so as to facilitate the presentation of the matter to the appellate court.

Accordingly, it is the ORDER, JUDGMENT and DECREE of this Court that the effective date for complying with, and making plans to comply with, those provisions in the injunction made and entered herein on February 24, 1968, set out in Part I, B (faculty desegregation), Part IV, C (transportation to Jefferson Davis High School, Peter Crump Elementary School and Southlawn Elementary School), and Part IV, D (the honoring of choices of Negro students who choose to attend Jefferson Davis High School during the 1968-69 school year) are hereby stayed until August 1, 1968.

Done, this the 2nd day of March, 1968.

FRANK M. JOHNSON, JR.
United States District Judge

Motion for Leave to Amend Notice of Appeal

(Filed March 6, 1968)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Come the Montgomery County Board of Education; James W. Rutland, Jr.; Fred Bear; George A. Dozier; Dr. J. Edward Walker; Isabelle B. Thomasson and Dr. Robert Parker, Members of the Board of Education; and Walter McKee, Superintendent of Education of Montgomery County, Alabama, and move this Honorable Court for leave to amend the notice of appeal heretofore filed on February 27, 1968, so that said notice of appeal shall read as follows:

> "Notice is hereby given that the Montgomery County Board of Education; James W. Rutland, Jr.; Fred Bear; George A. Dozier; Dr. J. Edward Walker; Isabelle B. Thomasson and Dr. Robert Parker, Members of the Board of Education; and Walter McKee, Superintendent of Education of Montgomery County, Alabama, appeal to the United States Court of Appeals for the Fifth Circuit from the injunction and order of the United States District Court for the Middle District of Alabama, Northern Division, entered on the 24th day of February, 1968, as fully set forth in the memorandum opinion of the same date and as amended on the second day of March, 1968."

DONE, this the 6th day of March, 1968.

HILL, ROBISON, BELSER AND PHELPS
Attorneys for Defendants

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Order Allowing Amendment of Notice of Appeal

(Filed March 6, 1968)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

The motion to amend the notice of appeal heretofore filed by the defendants having been considered by the Court, and the Court being of the opinion that the motion should be granted, it is hereby

ORDERED that the motion for leave to amend the notice of appeal herein filed by the defendants be and the same is hereby granted.

DONE this 6th day of March, 1968.

FRANK M. JOHNSON, JR.
United States District Judge

Amended Notice of Appeal

(Filed March 6, 1968)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

With leave of the District Court being first had and obtained, the defendants herein do hereby amend the notice of appeal heretofore filed herein to read as follows:

"Notice is hereby given that the Montgomery County Board of Education; James W. Rutland, Jr.; Fred Bear; George A. Dozier; Dr. J. Edward Walker; Isabelle B. Thomasson and Dr. Robert Parker, Members of the Board of Education; and Walter McKee, Superintendent of Education of Montgomery County, Alabama, appeal to the United States Court of Appeals for the Fifth Circuit from the injunction and order of the United States District Court for the Middle District of Alabama, Northern Division, entered on the 24th day of February, 1968, as fully set forth in the memorandum opinion of the same date and as amended on the second day of March, 1968."

HILL, ROBISON, BELSER AND PHELPS
Attorneys for Defendants

Defendants' Statement of Points

(Filed March 6, 1968)

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. .....

MONTGOMERY COUNTY BOARD OF EDUCATION; JAMES W. RUTLAND, JR.; FRED BEAR; DR. J. EDWARD WALKER; ISABELLE B. THOMASSON; and DR. ROBERT PARKER, Members of the Montgomery County Board of Education; and WALTER T. McKEE, Superintendent of Education of Montgomery County, Alabama,

Appellants,

v.

ARLAM CARR, JR., a minor, by ARLAM CARR, and JOHNNIE CARR, his parents and next friends; BATHSHEBA L. THOMPSON, JOHN W. THOMPSON, JAMES G. THOMPSON, and PHILLIP L. THOMPSON, minors, by BISHOP S. THOMPSON, SR., and LOIS E. THOMPSON, their parents and next friends,

Appellees,

UNITED STATES OF AMERICA,

Amicus Curiae.

The defendant-appellants, Montgomery County Board of Education, James W. Rutland, Jr., Fred Bear, Dr.

J. Edward Walker, Isabelle B. Thomasson, and Dr. Robert Parker, Members of the Montgomery County Board of Education, and Walter T. McKee, Superintendent of Education of Montgomery County, Alabama, state the following points on which they intend to rely on their appeal from the order and judgment and decree as amended, granting an injunction herein:

1. The issuance of the order, judgment and decree as amended granting the injunction herein was contrary to the evidence.

2. The issuance of the order, judgment and decree as amended granting the injunction herein was contrary to the law.

3. The Court erred in its order and directive that the Montgomery County Board of Education assign and transfer faculty members, student teachers and substitute teachers throughout all schools in the Montgomery County School System and from one such school to another, according to a fixed ratio based on race.

4. The order and directive by the Court that the Montgomery County Board of Education assign and transfer faculty members, student teachers and substitute teachers throughout all schools in the Montgomery County system according to a fixed ratio based on race is contrary to the law.

5. The Court erred in its order and directive that the Montgomery County Board of Education give an affirmative racial preference to students for attendance in the

Jefferson Davis High School regardless of proximity of the residence of the student to the school involved.

6. The Court erred in its order and directive that the Montgomery County Board of Education provide transportation to Jefferson Davis High School, Peter Crump Elementary School and Southlawn Elementary School.

7. There is no substantial evidence to support a finding or holding that these defendant appellants have not at all times complied with all orders of this Court.

HILL, ROBISON, BELSER AND PHELPS
Attorneys for Defendant-Appellants

Certificate of Service (omitted in printing).

Comments at Conclusion of Hearing of May 5, 1965

(Filed May 5, 1965)

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE MIDDLE DISTRICT OF ALABAMA

NORTHERN DIVISION

Civil Action No. 2072-N.

ARLAM CARR, JR., a minor, by ARLAM CARR and JOHNNIE CARR, his parents and next friends; and BATHSHEBA L. THOMPSON, JOHN W. THOMPSON, JAMES G. THOMPSON, and PHILLIP L. THOMPSON, minors, by BISHOP S. THOMPSON, SR. and LOIS E. THOMPSON, their parents and next friends,

vs.

MONTGOMERY COUNTY BOARD OF EDUCATION; JAMES W. RUTLAND, JR., FRED BEAR, GEORGE C. STARKE, GEORGE A. DOZIER, DR. J. EDWARD WALKER, ISABELLE B. THOMASSON and DR. ROBERT PARKER, Members of the Montgomery County Board of Education; and WALTER McKEE, Superintendent of Education of Montgomery County.

(The above-styled cause coming on for Hearing Upon Objections to Proposed Desegregation Plan, at Montgomery, Alabama, May 5, 1965, before Hon. Frank M. Johnson, Jr., Judge, a hearing was had, at the conclusion of which the following was dictated by the Court:)

The Court: All right, Mr. Reporter, will you type this for the lawyers, please. Particularly Mr. Sutin, as amicus; I want you to prepare a court order for me along these lines:

The injunction that was issued by this Court on July 31, 1964, of course, remains in full force and effect, except to the extent that it may be hereinafter formally modified by a court order, and what I am saying now is, of course, tentative; it will be formalized by an order to be prepared by Mr. Sutin along these lines and presented to you gentlemen prior to the date it is to be presented to me, and I will confer with you at the time it is presented.

Under the plan as adopted pursuant to the order of the Court of July 31, 1964, as of September, '64, grades one, ten, eleven, and twelve were desegregated under this "transfer freedom of choice" plan. The Board now proposes to the Court that in addition to grades one, ten, eleven, and twelve, they open and desegregate grades two

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and nine, effective September of this year. This Court is going to, with some minor modifications, approve this plan as proposed by the Montgomery Board. One modification is, in addition to grades two and nine that are to be desegregated and transfers accepted, effective September, '65, that the plan include grade seven. That means that as of September, '65, the Board proposes to desegregate one, two, nine, ten, eleven, and twelve; the Court approves that, and in addition orders that grade seven be desegregated.

Now, this "notice" provision in the plan isn't approved. I think the time is too short. There should be a thirty-day period for these parents to make application for transfer.

And notice should be given to all Negro parents of students in the County System in lay language by letter from the Board, on or before June 10, as to their right to transfer as to grades seven, nine through twelve, and one and two. They should be advised as to their freedom of choice and their right to apply, in nonlegalistic language. This should be augmented and supplemented; that is, the letter to be sent not later than June 10 should be augmented and supplemented by two newspaper ads—at least two; you can use more if you want to—published on June 20 and June 27, or some other dates that may suit the convenience of the Board, but along about that time. Applications for transfer should be taken during the thirty-day period, and not during just a fifteen-day period; applications should be taken from June 21 through July 20. That will give the School Board plenty of time. In these notices that are in the paper and sent out by mail, the parents should be advised as to the school district that they are in, that they have a preference, if they desire to exercise that preference by making application for their child or children to attend schools formerly predominantly attended by members of the opposite race they can do so.

Now, I understand the objections to applications being made to the office of the Superintendent of Education, but I understand the reason for it during this period of transition. I don't envision that the plan, except during this pe-

riod of transition, this year and possibly next year, will authorize that. But I think to require both parties to come is an onus and undue burden, so the plan should just require one of the parents to make the application.

Mr. Gray: Excuse me, your honor; is that one to physically pick it up and bring it back?

The Court: Yes; yes; yes, but not both. And the application can be made only by one parent, and not by both; if you run into any trouble like you say you had in one instance last year, I will resolve it for you.

The order should direct the defendants to report to this Court on or before August 10, 1965, as to the action taken on each application for transfer and assignment. The defendants should be ordered to file their plan for completion of the desegregated system, including abolition of the dual school or biracial school system, which of course still exists. I am not naive enough to believe that desegregation of certain grades by transfer, such as we are doing here, is full compliance with what the law eventually envisions and requires, but I recognize that it is a transition period, and I think that this is reasonable for the facts in this case and the circumstances existing in this particular school district at this time. So the Board should file with the Court its plan for completion of the desegregation of the dual school and biracial school system on or before January 14 of 1966.

The amicus, United States, should prepare this order and present it to me, together with counsel for the plaintiffs and counsel for the defendants, not later than May 17. Present it to those attorneys prior to the time, and consult with them concerning the preparation of it, particularly the notices, the dates that they are to be given. That means that the letter notice, then, for the thirty-day period the Board will be taking applications for transfers should be sent out not later than June 10; that the newspaper notices

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should be made on or about June 20 and on or about June 27; that the period for taking applications on the part of the Board for these transfers to grades seven,

nine, ten, eleven, twelve, one, and two should be from June 21 through July 20; the report to the Court for the Board on August 10; the complete plan for desegregation filed on or before January 14, 1966; this order presented on or before May 17 of this year.

Let me say this; that I recognize the problems that exist in this particular school district, and I think the plaintiffs recognize them, and both parties in this law suit have, up to this point, demonstrated to me an awareness of their responsibilities, not only to their clients, but to the school system; and I want to congratulate and compliment both the plaintiffs and particularly the School Board, Montgomery County School Board, for its efforts as demonstrated last fall in complying with the law as that law was reflected in the order of this Court. If you have any questions, gentlemen, I will be available.

Mr. Phelps: Judge, could I ask one question at this time? This is something that we could start work on.

The Court: All right.

Mr. Phelps: Would the court be receptive to the letter being sent to the parents by the report cards?

The Court: Any way you get it to them; I want Mr. Sutin to help in the preparation of that letter, to make sure that it explains exactly what their rights are in nonlegalistic terms.

Mr. Phelps: All right, sir.

Mr. Robison: That would be May 27, I believe.

Mr. Walter McKee: 27th or 28th.

The Court: You can accelerate the schedule if you wish, or if it is convenient, such as getting it to them a little later, to send the report cards, we will make it convenient, we will change the dates; sure.

Mr. Robison: Save the postage and the other things.

The Court: Absolutely; absolutely. You are going to

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have a problem, now, as to how to advise your first graders, those coming in the first grade; I take it you have some method of knowing who they are.

Mr. Robison: No, sir.

Mr. Walter McKee: No, sir.

The Court: Well, you will have to do that, then, strictly by publication—

Mr. Robison: We have no way of knowing.

The Court: —unless you know of some way to know who they are. Any other thing you think you might need to raise at this time?

Mr. Gray: Your honor, it is not on the plan, itself; it is on the reproduction of one of the Exhibits that we are supposed to reproduce. I am wondering whether or not—I am going to have to get them Xeroxed, and I need permission from the Court to be able to take them to get them Xeroxed for that purpose.

The Court: Well, I have no objection to you withdrawing them; if counsel wants to go with you, give them notice as to when you are going to take them so that they can take them with you, and you can sign them out from the Clerk. It may be, in view of this action, you will want to withdraw them and let them stay in custody of Mr. McKee; I don't know, that is up to you.

Mr. Gray: Well, your honor, what I think I would like to do at this time is to withdraw them, with the understanding that if we need them later, then we could have copies.

The Court: Why don't we do it that way?

Mr. Robison: That will be agreeable with us.

The Court: Then by agreement, let the Clerk return them to Mr. McKee, with the understanding that if the plaintiffs want them back—

Mr. Gray: Yes, sir.

The Court: —then you will make application directly to the lawyers, and they will get them to you for copying.

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Mr. Gray: Thank you.

The Court: All right. All right, gentlemen. Recess court until further ordered.

Court Reporter's Certificate (omitted in printing)

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Memorandum Transcript—Hearing of May 25, 1967

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

(Hearing in above-styled case having been had at Montgomery, Alabama, May 25, 1967, before Hon. Frank M. Johnson, Jr., Judge, the following comments were made by the Court at the conclusion of the hearing:)

The Court: All right, gentlemen; I will take this matter, then, under consideration. And, since there is very little controversy between you on it, you can expect an order to be entered substantially like that proposed; there will be a few changes.

I would like to say this to you here in the presence of the plaintiffs' and the Government lawyers; that I am impressed that the Montgomery County Superintendent of Education and members of the Montgomery County School Board of Education now evidence and have in the past evidenced a desire and intent to operate a school system here in Montgomery County as professional educators and not as politicians. This present attitude is demonstrated

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here at this time; this past conduct on the part of these officials has, without any doubt, inured to the benefit of the students, regardless of their race, in Montgomery County that seek quality education. And I have observed and I have been impressed that these officials have ac-

complished this largely through—or this has been accomplished largely through their efforts and without any serious discord or disruption as far as any school is concerned. This, when it is compared with some other similar operations, is a considerable feat, for which this community, in my judgment, owes these school officials their appreciation. It evidences a pattern of professional conduct that other systems could, for the benefit of their students, emulate.

I will enter a decree in this case.

Mr. Vaughan H. Robison: Thank you.

Court Reporter's Certificate (omitted in printing)

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Transcript of Hearing—September 5, 1967

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Before Hon. Frank M. Johnson, Jr., Judge, at Montgomery, Alabama, September 5, 1967.

Appearances:

For the Plaintiffs:

Gray & Seay (Fred D. Gray).

For the Defendants:

Hill, Robison, Belser & Phelps
(Vaughan H. Robison and
Joseph D. Phelps).

For the United States:

Reuben Ortenberg and
Alexander Ross.

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(The above case coming on for hearing at Montgomery, Alabama, September 5, 1967, before Hon. Frank M. Johnson, Jr., Judge, the following proceedings were had:)

The Court: Let's get to this next hearing, this Arlam Carr and Montgomery County; do you have any evidence in that case to take this morning? Mr. Gray isn't here, and it isn't set until eleven this morning.

Mr. Robison: That's right, sir; and I understand Mr. Reuben Ortenberg, from the Department of Justice, is in that case; having filed a motion, we would like a conference with your honor, if the court please, prior to the eleven o'clock hearing, if agreeable with all counsel and the Department of Justice.

The Court: All right. Well, why don't we set that conference for ten thirty this morning.

Mr. Robison: Fine.

The Court: You get in touch with Mr. Ortenberg, and you can get in touch with Mr. Gray, if he represents the —if he is handling the case for the plaintiffs.

Mr. Solomon S. Seay, Jr.: All right, sir.

The Court: All right; I will just keep these, then, for the time being. We will recess until further order.

(At which time a recess was had, and at 11:06 a.m., the case was called and the following proceedings were had:)

The Court: All right; Arlam Carr and others against Montgomery County Board and others, number 2072-N, —454— here on the motion filed for further relief by the United States and by the plaintiffs. Ready to proceed?

Mr. Ortenberg: Ready, your honor.

Mr. Robison: If the court please, we likewise have a motion, as your honor knows, before the court asking that the relief be denied, and as one of the grounds, setting forth it is not timely filed. The plaintiffs in this case didn't even join with the United States of America until the 29th day of August, and the amicus curiae filed it on the 17th day of August, some two months after our report was filed and approximately two weeks before school opened. As a matter of fact, today we are having faculty

and principal meetings, and we have asked that the motion be dismissed on that ground.

The Court: Well, if that is to be interpreted as a motion to dismiss without any hearing, I will deny it; but I will take in consideration the timing and—when and if I reach the substance of the matter.

Mr. Robison: All right, sir.

The Court: Ask your witnesses to come around.

Mr. Ortenberg: Mr. Walter McKee.

The Clerk: Do you have other witnesses?

Mr. Ortenberg: Yes.

The Court: All your witnesses that are going to testify should be sworn at this time.

Mr. Ortenberg: All persons—Mr. Smith and Mr. Seymore, Mr. Reed. Mr. Garrett.

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The Clerk: All witnesses, please raise your right hand. You and each of you do solemnly swear that the testimony you give in this cause to be the truth, the whole truth, and nothing but the truth, so help you, God.

The Court: All right; you want the rule invoked?

Mr. Ortenberg: Yes, your honor.

The Court: All right.

Marshal: This way, please.

Court Crier: Have to use this other room, that is—Grand Jury is in there.

Marshal: Go around on that side.

Mr. Robison: You want Mr. Garrett under the rule, Mr. Ortenberg? He is Assistant-Associate Superintendent.

Mr. Ortenberg: I guess it won't be necessary.

Mr. Robison: Thank you, sir.

WALTER MCKEE, a defendant, called as witness by the United States, having been duly sworn, testified as follows:

Direct Examination by Mr. Ortenberg:

Q. Would you state your name, address, and occupation, please, sir? A. Walter McKee, Superintendent of Schools, Montgomery, Alabama.

Q. Mr. McKee, were you served with a subpoena requiring you to bring certain documents to—this morning?

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A. I was.

Q. Do you have those documents with you? A. Yes, sir.

Q. May I have them, please? A. I have—which ones do you want, now, first?

The Court: Well, I directed those be furnished sometime ago.

Mr. Robison: We have, your honor.

The Court: Have you already furnished them?

Mr. Ortenberg: Yes, sir.

The Court: Have you already looked at them?

Mr. Ortenberg: Yes, sir.

The Court: Let's get them out here on the table then.

A. There is the letters.

Q. I will just take all of them. A. This is—

The Court: Have they been marked for identification, Mr. Clerk?

The Clerk: No, sir.

Mr. Ortenberg: Your honor, we were in conference until just before the hearing started. Would

you mark these Government Exhibit 1 for identification, please?

The Clerk: All of them as one?

Mr. Ortenberg: Yes.

The Clerk: Government Exhibit number 1 for

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identification.

The Court: What do they purport to be?

Mr. Ortenberg: Correspondence between the Superintendent or—and Associate Superintendent of Schools and teachers assigned to schools of the—

The Court: Do you have any objection to it?

Mr. Robison: No, sir.

The Court: It will be admitted in evidence, and I will consider it, in connection with your motion and your opposition to it.

Q. Mr. McKee—

The Court: Let me see them.

Q. —do you recall how many—how many teachers were —were tentatively assigned for the 1966-67 school year to teach in schools in which their race is in the minority? A. '67-68 or '6—

Q. No, sir; '66-67? A. My recollection was that there were five each way.

Q. Pardon me, sir? A. My recollection was it was four each way—

Q. Four each way? A. —in '66-67.

Q. And how many are tentatively assigned as regular classroom teachers, fulltime, for the 1967-68 school year? A. There were five employed each way, although in case

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of some of them, they have had to have been re-employed,

because some have resigned since they were accepted, but at the present time, there are five each way.

Q. And of the—of the total of ten who were assigned across racial lines, how many of those had been among the group that was—that were assigned for the 1966-67 school year? A. Well, originally, there were five; there were four of the colored teachers and one of the white teachers; but one of the white teachers has subsequently resigned.

Q. So that at this present time— A. As of the present time, there are four colored teachers that were in the group last year.

Q. So that for the 1967-68 school year, these ten regular classroom teachers include the four of last year plus six additional teachers that—that you have— A. I believe all six of those are new teachers.

Q. Now, of the—of the— A. Of course, we have the three speech teachers that we talked about in addition.

Q. Yes, sir; that would be regular classroom teachers that I am talking about. Now, of the ten teachers who are assigned across racial lines for the 1967-68 school year, and who were reported as such on June—in the June 15 report to this court, have any of those resigned? A. Two or three of the—of the white teachers have, but they have

been replaced.

Q. Were they replaced by other white teachers? A. Yes.

Q. The same number that had been—that had resigned? A. That's right; that's right.

Q. Who was it that decided, Mr. McKee, that there should be five teachers crossing over each way? A. Well,

we studied the situation very carefully after last year, and in discussion with other school systems, similar size and character to ours, and we thought that by and large the best way to start this thing would be in the senior high schools, and we made that attempt. We had hoped to expand it. For instance, we have a vacancy we have had for three or four weeks at Booker Washington, and we have offered it to at least a half a dozen or more people, and some of them will take—they say, "We will take it," then get back and write a letter or call back the next day, they have talked with their husband, and they won't take it; and we have held that open hoping we could expand it some more. But that is the way we are at the present.

Q. How did you decide on the number, ten? A. Number of—I didn't know that there was any magic about the number of ten; we were going to desegregate some faculties in the senior high school; in fact, we first thought about four; then it worked out where we could get five. If we could get six or seven—but we have had that terrific problem of getting the white teachers to accept the posi-

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tion in the colored schools.

Q. Why is it that it was decided that the faculties, the desegregation for this year, should only be in high schools? A. We felt it would work better there; we have tried to work this segregation problem without any hullabaloo as they have had in many places; we have tried to honestly work it smoothly. We felt that there would be less objection in the senior high schools, because one teacher would not have the pupils as much of the day as they would in the lower grades. And we felt that if we could get that accepted—you may not realize it, but even those

five teachers, there will be some seven hundred and fifty white children that will be taught by colored teachers, plus there will be seven hundred fifty children, just with those ten teachers, and we have got the problem; all of those parents, many of these parents say, "Well, it is all right, just so my child is not in that room." And we are going to get the calls and everything that—working to try to get that child out of their room. Plus we have had all this other atmosphere that you are familiar with, that has given some people some hopes.

Q. How many high schools do you have in the Montgomery County school system? A. Well, we have four high schools here in the city.

The Court: All that evidence is before the court, Mr. Ortenberg; this case has been going on a long time. We have taken testimony in it. I know the name of nearly every school in the system.

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Mr. Ortenberg: Yes, your honor.

Q. Mr. McKee, why was it decided that the faculty desegregation would take place in only four of the high schools in the system? A. Because we felt that if we could protect—if—everything better in the city, better than we could in the county. The county is pretty sparsely settled. There is no police force; there is only a few Deputy Sheriffs to cover the whole county; and we have already gone into this with all branches of the law enforcement. We are going to have special protection in every one of these situations where we have had teachers. Just like when we started at Lanier with three colored pupils, those pupils were watched every minute of the day by some-

body. We are going to have to do the same thing in a much greater degree with these teachers; we are going to have to assign our supervisors to spend a large part of their time, because it is going to—any little instance that comes up in that classroom is going to be a race issue, and we are going to have to avoid that, and we are going to try to do it and do it right.

Q. Are you familiar, Mr. McKee, with the—with the order of this court of June 1— A. I am very—

Q. —providing for faculty— A. I am very familiar with it. I know it says that it is our duty to—to integrate the faculties, and I also further know that under the law, we

can transfer teachers by Board action, but we know by experience that malicious transferring of people, when race is not even a problem, will always create a bad situation.

Q. Are—are you familiar with the fact that the order of this court does not limit the faculty desegregation to high school? A. I certainly am, but we were hoping that by doing it this way and getting it into peaceful operation, that next year would be a good bit easier; just like this fall, there will probably be a hundred Negro kids at Lanier, and I doubt if there will be a ripple because of it; but three years ago, if a hundred had appeared there, you would have—the private school system would have opened up here overnight.

Q. Are you familiar with the number of teachers who were displaced as a result of the closing of fourteen schools in the county this year? A. I don't know, but there wasn't any of ours displaced; they are all hired.

Q. Excuse me; I don't mean displaced from the system, but displaced from the schools that were closed? A. They are all hired in the system for next year.

Q. And were—what was the race of those teachers? A. All of them were colored.

Q. Are you familiar with how many there are? A. I would say there was forty odd—there was fourteen schools, and they represented from two to three teachers each.

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Q. Which schools are they assigned to? A. Various schools in the system.

Q. Were they all assigned to Negro schools? A. They were all assigned to colored schools, because these were all elementary teachers, and we wanted to make our start a successful start and make it in high school.

Q. How many—how many teachers are starting in the Montgomery school system in the 1967-68 school year for the first time? A. New to the system, I would estimate around a hundred.

Q. And which school levels are these teachers involved in? A. Well, there are some of all levels.

Q. Elementary, junior high school, and high school? A. Yes; uh, huh.

Q. And have any of the—these approximately one hundred new teachers been—been assigned across racial lines? A. All—all teachers that have been interviewed, even—that is on our application—have been asked if they would—I mean it is on their application and has been discussed—in most instances even when they went to the colleges to interview teachers in the spring, our people asked them if they would; many of them said they wouldn't; a few of them said they would. And those in the high schools, except the few that have stuck, that said they would, after we have

offered them the job, they—in a day or so, they came back and said their husband wouldn't let them or the neighbors were going to criticize them or so and so, and they just resigned.

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Q. Is there a—presently a school construction being conducted at the Carver School? A. Yes.

Q. Does that include any classrooms? A. Yes.

Q. How many classrooms? A. Oh, it's got—four classrooms are being added to the elementary school, and there are—there is an auditorium and an R.O.T.C. rifle range and a band room and a couple of music rooms.

Q. And will the teachers who will fill those four new classrooms all be Negroes? A. I am not sure whether the—I am sure some of those white teachers that are assigned there, probably the R.O.T.C., maybe one other, whatever departments—I don't remember what departments they are in off hand.

Q. Will those classrooms be ready for this school year? A. I think the four elementary ones will; the others won't be ready until a couple of months, I mean maybe longer than that, one of them.

Q. Will the four elementary— A. Yes; we hope to get into those.

Q. —classrooms? A. We hope to get into those, but none—but none of the rural children are there unless they chose to go there, and I don't think any of them chose there.

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Q. You say you hope—you hope to get into those; will they be ready on Wednesday when school starts? A. They will be ready, but I don't—those that are being built

in connection with the auditorium, it will be a month or so before they are ready.

Q. Yes, sir; but the classrooms— A. The four elementary school rooms; yes, sir.

Q. —will they be ready on Wednesday when school starts? A. Well, they will be ready on Thursday.

Q. Is there any other school construction going on? I believe there is a new high school being constructed; is that correct? A. Yes, sir.

Q. When will that high school be complete? A. We hope to open it a year from now.

Q. A year from now? A. Uh, huh.

Q. Have you made any plans about staffing that school yet? A. No; except we have selected the principal is all.

Q. When do you anticipate making plans for staffing that school? A. Oh, after Christmas, sometime in early spring, usually, when we—.

Q. Now, have you had any—any correspondence from —from universities and teacher placement organizations concerning faculty desegregation? A. I don't recall any except from the Alabama Teachers' Association; Mr. Reed, who is one of the witnesses you summoned here, I think

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sent out a letter to all Superintendents that they would be glad to help find any Negro teachers that anybody needed that would go to white—

Q. Did you respond to that letter? A. No; I don't even think it called for a response; it was just mimeographed. I have mine; it was a general letter to all—.

Q. Did you seek the assistance that he offered? A. We —we could find plenty of Negro teachers to go to white schools; that is not a problem with us; I say we can find colored teachers to go to white schools.

Q. Have you received any other such contacts from—from other organizations that might be able to provide white teachers? A. Not that I recall.

Q. Have you had occasion in the past, Mr. McKee, to hire teachers after the beginning of the school year? A. Oh, yes; you will have vacancies during the school year.

Q. How much—how much time can elapse after the school year—or has elapsed after—after the school year has begun when you have hired a teacher? A. Well, it depends on conditions; you will have a death or a teacher gets pregnant or husband moves out of town. It happens through the year; it varies. Either we fill it or either use one of the teachers on the substitute list; a lot of times we just use a substitute teacher, if it is too close to the end of the year, to fill out the year.

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Q. So you have—you have filled the teacher positions as late as two weeks or two months after school has begun? A. Oh, yes; yes, we will hire teachers.

Mr. Ortenberg: No more questions of this witness.
The Court: Any questions?
Mr. Robison: Yes, sir; if the court please.
Mr. Gray: Excuse me.
Mr. Robison: Yes, sir.
The Court: Just a minute; go ahead, Mr. Gray.

By Mr. Gray:

Q. Mr. McKee, have you employed any teachers since June 15, the day of this report? A. You mean—yes; we have employed some teachers since June 15.

Q. Approximately how many teachers have been employed since June 15? A. Oh, I would say thirty, thirty-

five; of course, we have had some of those white teachers that resigned in the colored schools, we have had to re-employ—I mean employ other people for those places.

Q. Approximately how many Negroes and how many white are those? A. I don't have the exact figures; there will be more—more white than there are Negroes.

Q. Were any of the white teachers employed since the 15th assigned to Negro schools? A. Yes; we have had to —had several.

Q. Were those replacements for the five, in addition to

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the five? A. Yes; they happened to wind up even. We were behind the court report, and we caught back up. We thought we were going to get ahead; then this last person resigned the other day came to us or came in and said her husband wouldn't let her take it, and she had been teaching in Detroit before this, but her husband wouldn't let her take it.

Q. So these were replacements; is that right? A. Well—

Q. White ones that were assigned? A. Yes; they were replacements for a vacancy.

Q. And not any in addition to the number. A. We were trying to get ahead, but we just kind of lost.

Q. Can you tell us, sir, how many white teachers have been assigned, period, to formerly all-Negro schools, approximately how many white teachers? A. I would say—not assigned, we have employed them to go there—probably twelve or thirteen, maybe fourteen for those—

Q. And all but the five have refused to go? A. They have either accepted it and then later wrote a letter of resignation, or they said, "I want to talk about it," and

then come back and—the next day or two and say they wouldn't take it.

Q. Now, how many Negro teachers have been assigned to formerly all-white schools? A. We have hired five Negroes to teach in former white schools.

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Q. And all five of those have agreed to go? A. Yes, sir.

Q. Is there any reason, Mr. McKee, why more Negro teachers can't be assigned to predominantly white schools? A. They could be found, but I think if we want to keep—our teachers now are about in proportion to our pupils, about fifty-nine forty-one, and the teachers and pupils both, and I think that if you want to carry this thing out in an orderly fashion through the years, you would want to keep them that; you wouldn't want to have them all Negro or all white.

Q. So the reason you don't have more Negro teachers, even though they are available, is because you can't get more white teachers? A. We haven't been able to; we have been trying to get some more white teachers to go in the situation.

Q. Now, let me ask you this, sir; is it your testimony that contact has been made of every white teacher in the senior high school department, and no white teacher, other than those that have already been assigned, will accept employment in Negro schools? A. In March of this year, our principals spent a whole meeting on the court order. They went back to their faculties to work with them to get anybody that would be willing to accept an assignment across lines. I don't think any came into the office; maybe one colored teacher. Then on April—or something, 13th, some date—I wrote a letter in which I asked each principal to read at their faculty meeting that section of

the court order that pertained to faculty desegregation,

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which was the one we were operating under in April, which is not a great deal different from the one we have now, and we did not get any response from that, not even from the Negroes. But we did, in talking with the Negroes that accepted those assignments, and the whites that accepted those assignments last year, when the Judge relieved us of doing that until this year, they all had said then that they would accept them a year from now; well, in the case of the white teachers, they had—most of them had gone, and with the exception of one, I believe, that we offered her the position; she accepted it, and later wrote a letter that she was leaving town.

Q. So then do I understand, sir, from your testimony that there are no white teachers now employed in the system who would accept employment in Negro schools? A. They did not—they did not respond to our request.

Q. No individual contact has been made? A. Yes; we have contact—we contacted two this week, or last week, or maybe week before last, about this science vacancy we have at Booker Washington; both of them, after they went home and came back the next day and declined.

Q. Now, these contacts you are referring to, either you or Mr. Garrett or some other person in—under your supervision made the contact? A. Well, I happened to be in

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with the group that—that was several of us that talked to these people.

Q. Now, that is with respect to those two; but— A. That's right.

Q. —but individual contact has not been made with the other hundred— A. No.

Q. —white teachers— A. No; no.

Q. —to see whether they would accept it? A. No, sir. They have been notified and have had the word, and, of course, the twelve or thirteen hundred people, that is a pretty big job of individual contact.

Cross Examination by Mr. Robison:

Q. Mr. McKee, was contact made with them through the principals of the schools? A. Oh, yes; with—both at the March principals' meeting and again at the April, when the letter addressed to the principals to take it up at their Monday afternoon faculty meeting with them.

Q. Do you have a copy of that letter with you, Mr. McKee? A. I have if they didn't get it with that other. There it is (presented).

Mr. Robison (to Mr. Gray): That is the one we showed you back there. Please mark that for identification.

The Clerk: Defendants' Exhibit number 1 for identification.

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Mr. Robison: Defendants' Exhibit. We would like to offer that in evidence, if the court please.

The Court: It will be admitted.

Q. In addition to that, was a bulletin sent out to the teachers and principals sometime in March? A. A—a discussion of—at the March principals' meeting, and then when we got no response from that, when each principal was to read that section of the court order at their next faculty meeting and urge teachers to—that would be willing to accept transfer to come in, then we followed it up with this letter, which was in April.

Q. Mr. McKee, do you and the Board of Education realize that there is an affirmative duty on you, under this court order, to desegregate substantially the staff of the Montgomery County system? A. We certainly do realize it.

Q. Is that a factor in making assignments today with respect to teachers? A. Yes, because that—we have made some and with that in mind.

Q. Mr. McKee, is the desegregation of faculty a serious educational problem, based on your experience? A. I think it is going to be the most serious problem of the whole problem in integration, because our people are going to, in my opinion, rebel in large numbers; they are going to cause various kinds of problems; and we can't afford to

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get into it unless we can adequately protect—because you have one incident one year, it will take you two or three years to live it down; and I think that if we had had very many instances in our student problems, then we would have had serious problems. Now, in three short years, we have been able to take a rather small number of Negroes at Lanier High School, and last year we had some seventy odd, and we are expecting around a hundred this year.

Q. Did I understand your testimony to be that the ten teachers which you have now in desegregated schools would teach approximately fifteen hundred students of the opposite race? A. That is correct. Because most teachers in high school will teach from a hundred and fifty to a hundred and sixty to seventy-five pupils during the day.

Q. Mr. McKee, are you still making efforts to further desegregate the faculty of this school system? A. Yes, sir.

Q. Is there a vacancy at Booker Washington now for a teacher? A. There is a vacancy now and has been there for some three or four weeks, in which we have—

Q. Could you have filled that vacancy with a colored teacher? A. Oh, yes; we could have filled it with a colored.

Q. Have you filled that vacancy? A. No, sir.

Q. What efforts, if any, have you made to fill it with a teacher of the opposite race? A. We have—our personnel department has talked to everybody that we had an application for that was eligible. We had one person that had the proper college training, and she accepted it; but we found that she would have to have gotten an emergency certificate because of some little course that she didn't have in that state that Alabama requires, and, of course, if you don't have the exact little courses, you can't get an Alabama teacher's certificate. So we had to deny that to her because she didn't—did not have a valid Alabama certificate, although she has a—is a college graduate and met the requirements in many—in some other states; I don't know how many, but at least she was teaching in another state.

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Q. Mr. McKee, in addition to the ten high school faculty desegregated teaching staffs, do you have other teachers that will be teaching of the opposite race? A. We have some speech teachers that will go into every elementary school, and a few, in a few extreme cases, that will go to high schools where children that have speech defects and work with six or eight, and they will work about six weeks, with part of the day in this school and go to another school; they will work three or four schools a day.

Q. Mr. McKee, you say there are three speech teachers, and are they—and they will be working with the elementary grades; is that correct? A. Yes, sir.

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Q. Do you have a vacancy for a fourth speech teacher? A. Yes; we could use a fourth one, but—

Q. Do you have a fourth speech teacher? A. We had a fourth—or rather last year we had three, but we plan to use four this year. Two of them were white, and one was colored. The colored teacher has had to resign because of pregnancy, but we hope she will be where she can come back and take up, because she will come in in the middle of the year, and it will not disturb anything. And we plan for these to work in all schools.

Q. Is it anticipated that this colored speech teacher will be placed in employment of the school system when she comes off this maternity leave? A. If she wants to.

Q. If she wants to be replaced; and they travel, as I understand it, from one school to another? A. One school to the other.

Q. As needed? A. As needed.

Q. Is that correct? A. By the people with speech defects.

Q. Mr. McKee, have you made any other plans as far as desegregation of faculty with your in-service teaching program? A. Yes, sir; in our in-service teaching program, we have had for a number of years demonstrations,

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that is, where experienced teachers, say in the third grade, or English or math or whatever the field might be, teach a what we call a demonstration lesson; and some fifteen or twenty teachers will come in to study and evaluate that lesson. And we plan to have those with white and colored teachers. Last year we had some in the colored schools where the white teachers went. This year we plan to have some in the white schools for the colored teachers.

And also, all of our faculty meetings and systemwide meetings and small group meetings have been completely desegregated, including our committees.

Q. Do you have certain supervisory personnel, Mr. McKee, in the system? A. Yes, sir; we have—

Q. How will they be utilized? A. We plan to utilize them as feasible on a desegregated basis.

Q. Where the staff has been desegregated, will you have supervisory personnel in those rooms? A. We will have to in those situations; we are going to have to keep our supervisors close to that situation for, in my opinion, several months, because we are going to have a storm of requests to transfer their child out of that particular room. Plus the fact there are going to be some incidents; there are going to be some boys and girls in that room that are going to want to provoke an incident, and we are going to have to watch them with everything we have. Not only us; we are going to have to have the Police Department

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and the Sheriff's Department.

Q. Mr. McKee, after you submitted your report on June 15 to this court, and prior to the opening of school, which is Wednesday, I believe, tomorrow, day after tomorrow, what plans, if any, did you make in order to effect this desegregation of the faculty? A. Well, we had meetings with all principals involved; we had the Chief of Police, along with several of his assistants; the Sheriff, along with his assistants; the Chairman of the Board of Education; many of our supervisors; our attorneys—had all met together to go over plans and procedures for the handling of this situation.

Q. In connection with that, also, have you not gone into a community relations program with respect to various organizations— A. Oh, yes; we have—

Q. —in spite of the present situation with regard to teacher shortage? A. We have carried this into other organizations and have tried to prepare the way for them. I might say that in addition to that, that our substitute list which will go out to all principals tomorrow is just an alphabetical list of teachers, and it—that are available, and tells what grades they are available in.

Q. Mr. McKee, have room assignments been made and equipment assignments been made in the school system? A. Oh, yes; schedules have been made, and the teachers—

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many of them have been by there beforehand, but out of town teachers may be there today for the first time, but they are getting those this morning at the various schools; they will be there all day.

Q. At the schools right today are principals and faculties having meetings? A. All principals and teachers are to be in their schools today from eight thirty until three meeting with the assignments and getting their rooms and equipment and all ready.

Q. Mr. McKee, you stated in reply to a question by the Government and Mr. Gray that approximately a hundred new teachers had gone into the system; that is about ten per cent of the entire student—I mean entire faculty employment of this county, is it not? A. It is not quite ten per cent.

Q. Not quite ten? A. Our turnover would probably run ten per cent or less.

Q. Based on your knowledge and experience in other systems, is ten per cent a very small turnover in a system? A. From what I read in the literature, it is a very small turnover.

Q. Do you happen to know what the national average

is? A. No, I don't; I have read somewhere—it seems like it was somewhere between fifteen or twenty per cent, but I—

Q. Now, you were asked, Mr. McKee, with respect to those faculty personnel that were displaced as a result of

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the closing of certain schools under order of this court; you said they had been reassigned in the system; is that correct? A. They have been placed; every one of them.

Q. Were they assigned to elementary schools; were they all elementary teachers? A. They were all assigned to elementary; one of them we made a principal.

Q. One you made a principal? A. Uh, huh. But he is principal of an elementary school.

Q. Principal of an elementary school.

Mr. Robison: I believe that's all.

The Court: Anything further?

Mr. Ortenberg: Yes, sir; your honor.

Redirect Examination by Mr. Ortenberg:

Q. Mr. McKee, going back now to the teachers; of the—of the ten reported on June 15 who resigned, do you recall when it was that they—that they resigned? A. Well, it would be at different times; some of them may have resigned before the 15th; some resigned after the 15th.

Q. When were— A. Some of them got to a stage that they—they verbally accepted the job, as—as I mentioned, and then went home and came back the next day and said—they said they wanted to talk it over, and they came back the next day and said they wouldn't take it. Of course,

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there was no written thing on that.

Q. When were they replaced? A. Well, at various times; those minutes that I filed there show, but it has been, some of them, in the last month, I think, or maybe less than that that we have just replaced one of them.

Q. Have the resignations been throughout the summer? A. Yes; at various times.

Q. How many—how many of them actually resigned; how many of the ten reported on June 15 resigned? A. Well, I think it was only about two positions that people resigned; but there were several different people hired for those two positions. I think three of them have stuck out all the way through; but if one would resign, we would hire, maybe, somebody else, and then they would resign.

Q. How soon after one— A. Just as soon as we could find somebody that agreed to accept it that was capable.

Q. How long did that usually take? A. We may have an application on file; we try to keep applications on file for all kinds of places; and, of course, at this time of the year, they can't—lots of them that might have taken it can't get released from another place. You see, in—in Alabama a teacher, up forty-five days before school starts, she can resign anywhere she wants to, even—without even consulting where she is working, if she wants to; but then

if a principal or a Superintendent objects after that forty-five days, he has the right to go to the State Superintendent to cancel her certificate if she is going to teach in Alabama. So the—you have a lot of applicants that have accepted jobs and at this time can't get released; they could get released the 1st of July.

Q. Now, Mr. McKee, did I understand you to say that because you have no difficulty in finding Negro teachers, that once you achieved the level, the number of Negro

teachers that you had desired, that you no longer attempted to find additional Negro teachers to teach in white schools? A. We wanted to keep it fairly well in balance, and we felt that that was in the spirit of the court order.

Q. So once you got five, you didn't try to get any more? A. We tried to get this—we still have a vacancy now that we are trying to fill at Booker Washington; we hope somebody—we may be able to get that filled today.

Mr. Ortenberg: All right; thank you.

Mr. Gray: Like to ask just one question.

By Mr. Gray:

Q. With respect to your new teachers, did you inform the new teachers that, as a condition of their employment, they may be assigned to either Negro school or white school? A. Yes.

Q. And integrated school? A. Yes, and it is also on the application; but what they will do is they will sign

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and file the application, then when you offer them a job in that, then they will go home and talk about it and send in their resignation.

Q. But they did understand that they could be assigned in schools— A. Yes; it is typed on the application or mimeographed on the application blank.

Mr. Gray: That's all.

The Court: All right; call your next one.

Mr. Robison: If the court please, in reply, in rebuttal, he asked about teachers that had resigned; we have some letters here.

The Court: I think I understand that situation pretty well; go ahead if you want to.

Recross Examination by Mr. Robison:

Q. Just a minute, Walter; look at these and tell me what they are, Walter? Are those letters of teachers that you had assigned— A. Yes, sir.

Q. —to integrate the faculty and they then wrote you these resignations? A. Yes; most of these are those.

Mr. Robison: All right, sir. Ask that these be marked for identification as Defendants' Exhibit 2.

The Clerk: Defendants' Exhibit number 2 for identification.

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The Court: Any objection?

Mr. Gray: No objection.

The Court: They will be admitted.

Mr. Ortenberg: No objection.

The Court: Any other witnesses?

Mr. Robison: That's all.

Mr. Ortenberg: No other witnesses, your honor; no other witnesses.

Mr. Gray: No, sir.

The Court: You have any other testimony?

Mr. Robison: No, sir.

The Court: All right. You want to be heard in argument?

Mr. Ortenberg: Your honor, the Government's position simply is that—that the school—

The Court: Let me ask you this; how much teacher desegregation do you have in Mobile?

Mr. Ortenberg: I—I think that—I don't recall the exact number, but that is still pending before the court; I think it is a similar—

The Court: Have you had a hearing on your motion to accelerate that down there?

Mr. Ortenberg: There was a full hearing, and the court entered an order in that case, which I believe did not concern faculty, and it is the matter of faculty—am I correct?

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Mr. Ross: (Nodded to indicate affirmative reply)

The Court: Are you having to take that to the Court of Appeals?

Mr. Ortenberg: I believe so, your honor.

The Court: How about your Birmingham; how much faculty desegregation do you have up there?

Mr. Ortenberg: We have been unable to determine the exact number, in the report under the Jefferson County decree for those systems is not—is not due until September 20.

The Court: Uh, huh.

Mr. Ortenberg: However, we expect that if—that if—

The Court: That is after you had to take that one down to New Orleans, too?

Mr. Ortenberg: Yes, sir.

The Court: And that Bessemer and Fairfield the same?

Mr. Ortenberg: The same—in the same group of cases.

The Court: And this is one you haven't had to take down there—

Mr. Ortenberg: That's right.

The Court: —and you waited until a week or ten days before school to file your motion. I just don't have much sympathy for you at all in this

case. I will hear you in argument, though, if you want to make it in light of what my attitude is about it.

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Mr. Ortenberg: Your Honor, I'd just like to say that the reason that the Government waited so long is that we expected that the school system would have been—would be making continuous desegregating assignments during the summer, and as soon as we learned that—that that was not the case—

The Court: You are dealing here with a school system that you haven't had to take to your appellate courts a single time since you started. It is the only major school system in the State that you haven't had to do it on; that they have done what they have done in good faith, and they have been ahead of most of your other systems in every field.

Mr. Ortenberg: Your honor, I think there are systems in Alabama which proportionately have done a lot better than Montgomery.

The Court: Other than Huntsville, where are they?

Mr. Ortenberg: Well, I—I don't know them exactly, sir, but I think that under the—

The Court: I know ninety-nine of them that haven't.

Mr. Ortenberg: I—I just don't—do you recall any other places?

(Mr. Ortenberg conferred with Mr. Ross)

Mr. Ortenberg: Mr. Ross tells me that, for example, Chambers and Butler County—Counties

haven't yet, but are scheduled—they are—they are among the ninety-nine—are scheduled to have desegregating assignments which would exceed pro-

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portionately or in actual numbers what the Montgomery County—County has done, and we think that it's—it's—it's a relatively—relatively simple matter to—to make the assignment. The School Board recognizes that it can make the assignments, but it chose to limit the desegregating assignments to high schools, and it—it chose to desegregate only a certain—certain number. Now, granted, there have been some difficulties, but we think the School Board hasn't tried hard enough, and it could try and could make additional assignments for this school year. Classes haven't even begun; they won't begin until Wednesday; and Mr. McKee testified that—that they have—they have hired—in the past hired and assigned teachers to classes after the school year has begun, and we think that it—that that can be done now; except instead of hiring from outside the system, they could be moving teachers around. We think they have had an opportunity, with a hundred new—new teachers—approximately a hundred new teachers for this school year and forty-three teachers who were displaced, to desegregate considerable amount, but that they haven't taken that opportunity, and that the responsibility for doing it this year under this court's order of June 1 still rests with the defendants, and we believe that they can do it now. Thank you, your honor.

The Court: Any argument?

Mr. Robison: If the court please, I would like to briefly say that this school system realizes the af-

firmative duty that your order places on them. They realize that they have the authority and have

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made assignments and transfers of teachers. There was considerable study that went into the desegregation of faculty plan for this system, and we have patterned it, after a fashion, after the pupil desegregation plan. We have desegregated in high schools, and we have speech teachers in elementary schools. We realize that the court order requires that we exercise every effort to desegregate faculties, and we are continuing to do so; witness the fact that we have a vacancy at Booker T. Washington which we have not filled. We will continue to try to in good faith carry out the order of this court. Plans have been made, after our report was made, for a desegregation of faculty based on what we proposed June 15. There has been only one change, and that has been additional three students. And we feel like that we have substantially complied with the court's order, and that there is a substantial desegregation of faculty in this system.

The Court: I didn't mean to cut you off, Mr. Gray.

Mr. Gray: Your honor, there is only one thing I hope the court will consider, and—and—and—in—in—in deciding this case, and that is what effect this court's decision may have in the other ninety-nine school systems in Lee v. Macon, and in these systems, the—their report isn't due until after school starts.

The Court: Has there been any motion filed in this case to bring the order entered in this case in conformity with—excuse me—in conformity with the

order entered by the three-judge court in Lee against Macon?

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Mr. Gray: My recollection is we did file such motion, and we had a hearing on it back in the late spring or early summer; I think such motion was filed.

The Court: Was an order entered to that effect?

Mr. Gray: Yes, sir; the current order was an order after that motion had been made.

The Court: Uh, huh.

Mr. Gray: And I just want the court to consider—

The Court: How does Montgomery's performance generally correspond to the performance of the schools in Lee against Macon, with the exception of some outstanding schools that—how—how—

Mr. Ross: Your honor, I could give you a detailed answer to that question if you would like it.

The Court: Of course, I have those statistics in my office; I could go look it up; but generally, how does it?

Mr. Ross: Well, your honor, I—I don't have it precisely with me at this time; this is based on informal reports made to us and to the State Superintendent's office.

The Court: The only thing I have is what I got through you all.

Mr. Ross: Yes, sir; well, of the ninety-nine, there is approximately forty that have plans for a—for an average of one desegregating teacher per school in their system.

The Court: Forty?

Mr. Ross: That is pretty close to half.

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The Court: With one—

Mr. Ross: At least one—

The Court: —per school?

Mr. Ross: —desegregating teacher per school in the system.

The Court: (Nodded to indicate affirmative reply.)

Mr. Ross: There are ten or twelve of those that have two teachers per system, and beyond the forty, there is another fifteen or twenty that are pretty close to one teacher—per school in the system.

The Court: Uh, huh.

Mr. Ross: The Superintendents, by and large, worked very hard and—in many systems, and have done what the court decree says, no segregated faculty at any school, and where possible, more than one teacher per school.

The Court: Yes.

Mr. Ross: Many have done that. In Montgomery, obviously it is certainly a lot less than one. It will be—I guess there will still be over forty schools in Montgomery County this fall, under present plans, that do not have any interracial faculty whatsoever, and I might add that—that the small rural systems kind of look—keep their eye on what is happening in the big cities.

The Court: I hope they don't watch Birmingham and Mobile too closely.

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Mr. Ross: And—well, the publicity about Birmingham and Mobile has had an adverse effect on

small county Superintendents who were trying to do what the order says, and they—and they say, "What about these people?" Well, the problem is—

The Court: Of course, that is what I am doing now.

Mr. Ross: That's right. Well, the reports in those cases—

The Court: In dealing with one of the three or four metropolitan areas in the State.

Mr. Ross: I think—

The Court: I am pretty sensitive to classifications of schools throughout the State, and I think the rural schools, those that can be classified as rural, should be kept going just about the same pace, with the same performance, and I think that should be true as far as your metropolitan areas are concerned, too. It hasn't been the case.

Mr. Ross: I think we are going to find that the rural systems are doing better than the city systems.

The Court: I think so. I think so.

Mr. Ross: And I think that the basic problem involved in this case, and generally, is to what extent the burden of teacher desegregation is on the—on the teachers and to what extent it is on the Superintendents—

The Court: Well—

Mr. Ross: —as far as—

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The Court: —I have expressed myself on that in the three-judge court case upon two or three occasions: That if you can't do it by persuasion, you do it by assignment.

Mr. Ross: Yes, sir.

The Court: That is what the law requires; there is no question about the law in the case.

Mr. Ross: Well, the point that myself and Mr. Ortenberg are making here—and I think the cities—we may have been late in filing our motion—

The Court: You say they haven't gone far enough.

Mr. Ross: —they are the—they are the examples for these smaller systems, and it is going—it—it is pretty reasonable for a Superintendent in a small system at this point to say, "Look what I have done, I have prepared my community for desegregating a teacher in every school, and in these big cities they are not doing the job."

The Court: Yes. All right, gentlemen.

Mr. Gray: Your honor, just one final thing; and that is I think—and I realize that this—we are much further along in this case than we—than they are in Birmingham and in Mobile, and I think it is because of the difference in the court; but what we are concerned about is while we are dealing here with one school system, I hope we don't meet what may happen in this case in ninety-nine other school systems, and I just hope the court will consider that in whatever ruling it makes.

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The Court: I didn't follow you on that; I am sorry; I didn't understand what you were talking about?

Mr. Gray: What I was simply saying, your honor, is that in view of the fact there is a question of tardiness of the motion, that will not be the question in the ninety-nine school systems who will be

making reports in the next couple of weeks, and I am just hoping that whatever action the court takes here will not be used as a precedent in what the court may do in these other ninety-nine systems as a guide. What I am really saying is that there are ten crossovers here in a big metropolitan school system—

The Court: I understand what you are saying.

Mr. Gray: —and we get to some of these smaller ones, and I would hate for us to meet the same problem in one of our other school systems. And because of the tardiness here, there may be a question of—of penalizing some other persons who would normally receive some benefit.

The Court: All right; has the teacher—the State teacher choice law had any effect in this case?

Mr. Robison: If the court please, we got a notice this morning in connection with that, and they brought it to the office; I have not advised with them about it. Frankly, at this stage, it's not affected Montgomery too much.

The Court: Well, all right, gentlemen.

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Court Reporter's Certificate (omitted in printing)

Transcript of Hearing—February 9, 1968

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Before:

HON. FRANK M. JOHNSON, JR.,
Judge,
at
Montgomery, Alabama, February 9, 1968.

Appearances:

For the Plaintiffs:

GRAY, SEAY, LANGFORD & PRYOR
(Fred D. Gray and
Solomon S. Seay, Jr.).

For the Defendants:

HILL, ROBISON, BELSER & PHELPS
(Vaughan H. Robison and
Joseph D. Phelps).

For the United States:

BEN HARDEMAN,
FRANK D. ALLEN, JR., and
CHARLES W. QUAINTANCE.

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(The above-styled case coming on for hearing at Montgomery, Alabama, February 9, 1968, before Hon. Frank M. Johnson, Jr., Judge, the following proceedings were had:)

The Court: Carr against Montgomery County Board of Education, Civil Action 2072-N, set for hearing at this time upon motion of the United States for further relief, that motion having been joined in by the plaintiffs, and the motion of the United States for additional further relief, filed February 7, that motion having been also joined in by the plaintiffs. Movants ready?

Mr. Allen: Yes, your honor; we are ready.

The Court: Plaintiffs ready?

Mr. Gray: Yes, sir; your honor.

The Court: Defendants ready?

Mr. Robison: If the court please, we have been served this morning with a motion by the plaintiffs in this case which goes into an altogether different facet, namely, transportation. I understood the motion of the United States this morning was pertaining to faculty and athletics. We would move at this time to dismiss or strike the motion filed by the plaintiffs this morning, in that it is not timely filed and in that it is not within the scope of the motion filed by the United States and joined in by the plaintiffs and in that it fails to state a cause of action upon which relief can be granted.

The Court: Well, I will deny your motion; if, after we conclude the hearing today, you, by reason of the late

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filing, want additional time to present other testimony in connection with this facet of the case, I will, of course, give you an opportunity to do that. I won't penalize you because of the late filing.

Mr. Robison: Yes, sir; because we are not prepared at this time—

The Court: My reason—

Mr. Robison: —to go into the—excuse me.

The Court: It is not entirely foreign to the motions now pending. It may particularize, and it does, to more extent or greater extent than the motions now pending, but it is not foreign to the matters for which this case was set today. If I read the motion correctly, the hearing today goes to all facets of the legal duty on the Montgomery County Board to substantially desegregate its system pursuant to the orders that have heretofore been entered; and that, of course, includes transportation, and it refers to all your schools in the system—but, since this is focused particularly to one school and the transportation in connection with that school, if you need additional time, I reiterate, after we conclude the testimony today on this phase of the matter, I will give you an opportunity to be heard further on it.

Mr. Robison: All right, sir.

The Court: But I have read Superintendent McKee's deposition that was taken, and this was touched upon in that deposition on cross examination by Mr. Seay, so he has had notice, and you all have had notice, that they were interested in this phase of the case. So I deny your motion

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to strike and deny your motion to continue this aspect of the case.

Mr. Robison: All right, sir.

The Court: Call your witnesses around.

Mr. Allen: Your honor, could I ask—we have several witnesses; I would like to put them all under the rule, if I could.

The Court: Call them around first, if you will; we are going to swear all witnesses at this time.

Marshal: All the witnesses, please come around, all witnesses who expect to testify.

Mr. Gray: Mr. Scott..

Witness Herman L. Scott: Right here.

Mr. Gray: Mr. Wilson.

Witness Wilson: Right.

Mr. Gray: My witnesses are here.

Mr. Allen: Ours are all here, your honor.

The Court: Your witnesses?

Mr. Robison: Yes, sir.

The Court: All right; swear them.

The Clerk: All witnesses, please raise your right hand. You and each of you do solemnly swear that the testimony you give in this cause to be the truth, the whole truth, and nothing but the truth, so help you, God.

The Court: All right; let the witnesses go to the witness

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room, if you will, please.

Marshal: All witnesses, please come this way.

Mr. Robison: If the court please, we would like to have excused from the rule Mr. Walter McKee, who is a party to this case, and Mr. Silas Garrett, who is Associate-Assistant Superintendent.

The Court: They may remain in the court. Your first witness.

Mr. Allen: Call Mr. McKee. If the court please, I would like at this time to introduce Mr. McKee's deposition, discovery deposition, to avoid going into the same matters he has testified to as U. S. Exhibit number 1.

Mr. Robison: We have no objection.

The Court: It will be admitted.

WALTER MCKEE, a defendant, having been duly sworn, testified as follows:

Direct Examination by Mr. Allen:

Q. Will you state your name, please, sir? A. Walter McKee.

Q. Are you Superintendent of Education of the Montgomery County? A. Yes.

Q. How long have you held that position? A. Since July of 1958.

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Q. I believe you testified—testified at your deposition that since September 1, 1967, your system has hired thirty-one new teachers; is that correct? A. I believe that is correct?

Q. And since that same time, twenty-two teachers have left the system; is that correct? A. I believe that is correct.

Q. You also mentioned seven of the thirty-one teachers who were placed in situations where their race was in the minority? A. That is correct.

Q. Of those seven, two are white teachers who were assigned to the Paterson School; is that correct? A. I believe that is correct.

Q. And two white teachers were assigned to Hayneville Road School? A. Correct.

Q. Now, one was a white teacher who was assigned to the Goode Street School, or Goode Street School? A. That is correct.

Q. And Goode Street School actually now has an all white faculty; isn't that correct? A. That is correct.

Q. It has— A. However, a majority of the students are colored.

Q. —in excess of fifty per cent of the children are Negro; is that right? A. More than likely.

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Q. And one of those seven, the only Negro teacher of those seven, has been assigned as a speech therapist? A. That is correct.

Q. One of the teachers has been assigned as a—assigned to Booker Washington; is that correct? A. One, Booker Washington; yes, I believe that's right.

Q. I believe you also testified that for the first semester of 1967-68, you had approximately one hundred fifty student teachers in your system; is that correct? A. That is correct.

Q. And none of these were assigned to situations where their race was in the minority? A. That is correct.

Q. For this semester, you have now assigned four Negro student teachers to predominantly white schools? A. That is correct.

Q. How many student teachers do you estimate you will have throughout the system for this current semester? A. Well, it would vary, because, as I told you in the deposition, that Auburn is on a quarter system, and they are not on a semester system, and we will have some from Auburn and some Troy; I would say we could have as many as two hundred at one time, but it will vary as one school's quarter ends and one's semester ends.

Q. You say you will have as many as two hundred at

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one time? A. We could have; yes.

Q. Do you say—that means that the total for the whole semester would be in excess of two hundred? A. The Auburn teachers on a quarter system; they are not on a semester system.

Q. I mean your total? A. Somewhere in that neighborhood; I wouldn't know exactly.

Q. The Jefferson Davis High School which is being constructed on Carter Hill Road, you plan to open this this coming fall? A. Yes, sir.

Q. Prior to this hearing, when I asked you to mark on this map which is Plaintiff's Exhibit 1 to a prior hearing previously introduced in this case location of the Jeff Davis High School; is that correct? A. Yes, sir.

Q. Is that this X marked right here I am pointing to? A. If that is right across from Carter Hill Road Elementary, that is it.

Q. All right; I also asked you to mark the location of the other high schools in the city of Montgomery, and are these other X's that I am pointing to here those high schools? A. Yes, sir.

Q. This X located on Court Street is Lanier High School— A. That is correct.

Q. —correct? This one on Fairview is Carver? A. Carver.

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Q. This one is Booker Washington— A. Booker Washington.

Q. —right? And this one? A. Lee.

Q. And you also testified, I believe, on page twenty-five and twenty-six of your deposition; "About how many teachers will you have out there next year," referring to Jeff Davis High School— A. Well, is that—

Q. Excuse me, let me finish reading. "Well, of course, since the school will be operated under a freedom of choice plan, it would all depend on how many choose it. Now, we opened a new school several years ago, and it was made up largely of tenth graders, and most of the eleventh and

twelfth graders decided to stay in their old school. This may be different this year. We have no way of knowing." Question, "You won't really finalize your faculty plans until after the choice period? Yes, sir. When is the choice period? In March. It ends the 31st?" Answer, "The 31st of March." Now—now, is that—the inference to be taken from that that you will assign teachers based on where the students come from? A. We—

Mr. Robison: If the court please, we would object to what the inference to the question is.

The Court: Well, I sustain it to that question; go

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ahead and ask him what his—what he intends to do.

Mr. Allen: Well—

The Court: That part of his testimony in the deposition is unclear, very unclear; it is not developed sufficiently.

Q. What—

The Court: You might develop it now, if you wish.

Q. Where do you intend to get the teachers that you will assign to Jeff Davis? A. When the choice period is over on the 31st of March, then the principal, Mr. Rutland, will notify all of the students that have chosen Jefferson Davis School to meet—where we haven't decided—or he will go to schools where there are large numbers of them coming from, and they will be given a chance to choose the subjects that they want to take. Then after they choose their subjects, you can see how many English teachers you will need, how many Math teachers, how many Typing

teachers, how many of any of the other subjects—Economics—that you will need, French or whatever we offer; and, of course, what they choose will be what they will get.

Q. Then where will you get the teachers to teach those subjects? A. Well, the teachers will come from the other four high schools or newly employed people or somebody moved up from the junior high; we don't anticipate a great many more students than we have this year.

Q. What is the relationship between—between the stu-

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dents, or where they come from, and the—and where the teachers will come from, if any? A. It doesn't—it doesn't make any difference where the students come from under the court order provided—

> The Court: What he is asking you, Mr. McKee, to use an example, if a thousand of your Lanier students, through the freedom of choice, elect to go to your Jefferson Davis School, are you going to then get the teachers from Lanier that formerly taught the thousand; that is what he is asking you?
>
> Witness: Well, we—we just have to work it out. Some of them might not fit; we might have to transfer others; some of them undoubtedly would come from there or Booker Washington or whichever other school that—

Q. Teachers are assigned to various schools based on average daily attendance for the previous year; is that right? A. Well, in high school, it's—it's partly average daily attendance, and partly by the subjects that is in demand in those particular schools.

Q. Well, there is a relationship between how many teachers you have at a school and how many students you have there? A. Oh, sure; sure.

Q. So if—if you have fewer students at Lanier next year than you have this year, you will have fewer teachers? A. That is correct.

Q. And, by the same token, if you have the same number of students at Booker Washington this year, you will have approximately the same number of teachers? A. That would be correct.

The Court: On that point, have you already entered into your contract—contracts with your teachers for Lanier and Booker Washington next year?

Witness: No, sir; we have sent out notices to find out which teachers want to come back for next year; that is as far as we have gone.

The Court: When is your usual period of contracting with your teachers?

Witness: We usually—sometime in April we notify teachers that unless they have been notified otherwise, they are hired again for next year.

The Court: All right; go ahead, Mr. Allen.

Q. You have already appointed a principal and five faculty members for Jeff Davis High School; is that correct? A. I believe that is correct.

Q. Are they all white? A. They are all white.

Q. The five faculty members are—in addition to their teaching duties, will be the coach, two assistant coaches, a band director, and a principal's assistant? A. Principal's helper; he is not—we are not quite big enough for

an assistant principal, but this person will teach and help

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in the office.

Q. He will help the principal with the administration? A. Part of the day; yes.

Q. I believe you have also stated previously that it is not now your current plan to furnish any transportation to Jeff Davis High School— A. That is correct.

Q. —next year? You also plan to open two elementary schools next fall? A. That is correct.

The Court: New ones?

Mr. Allen: Yes, sir—

Witness: Yes, sir.

Mr. Allen: —new ones.

Q. Those are—the construction will begin on that shortly? A. Well, it's—it is begun on one, and I am pretty sure it is begun on the other one; the contract has been signed.

Q. And do you plan to furnish any transportation to those two new schools? A. No, sir. See, as I testified, our transportation is for rural children, not in the city area.

Q. Well, do you now furnish transportation for rural students into the city to the other schools? A. Yes; we have been in some certain city schools, not all of them.

Q. You furnish transportation to Lee, Lanier, Booker

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Washington, and Carver? A. That is correct.

The Court: Within the city?

Witness: No; it is from the county. Now, there may be a few in certain areas that have been re-

cently taken in if it hasn't been changed; but, by and large, it is the rural children. We have about only about eight thousand of our children are transported.

The Court: Now, one of—go ahead.

The Clerk: Government's Exhibits 2 through 32 marked for identification.

The Court: 2 through what?

The Clerk: 32.

Q. I will hand you folders marked as Government's Exhibits 2 through 32, and ask you if you will identify those, please, sir? A. Well, I believe they are the folders that you copied of the teachers that have been hired since the opening of school.

Q. All right. A. And incidentally, Mr. Garrett hired another one yesterday who is a colored teacher going to—I mean a white teacher going to a colored school.

Q. Which school is that? A. I—I can't say for sure; it is Paterson—no, it is—is it Paterson?

The Court: Fews.

A. Fews—Fews Elementary.

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Mr. Allen: I offer Government's Exhibits 2 through 32.

Mr. Robison: We have no objection. They are copies; those are the copies of the records which you got that deposition from?

Mr. Allen: That's right.

The Court: They will be admitted.

The Clerk: Government Exhibit number 33 for identification.

Q. I will hand you a bundle of documents marked as Government's Exhibit 33, ask you if you will identify these, please, sir? A. Those are the weekly reports made by our schools and up through—they did not include last week, because they were not quite all in, but it is the week before.

Q. Are these regular business reports? A. No; they are regular weekly attendance reports.

Q. And they are submitted to you by the principal of each school? A. That is correct.

Q. Do those records show the number of substitute and the names of substitute teachers which have been used for the week that the report covers? A. At the bottom of the report, it says, "Name of teacher, number of days, cause of absence, name of substitute employed," and it shows the number of days she taught.

Mr. Allen: I would like to offer U.S. Exhibit 33 into evidence, and we have agreed with Mr. Robison

that we will copy these and substitute copies so that they can keep their records.

Mr. Robison: We have no objection.

The Court: They will be admitted.

The Clerk: Government Exhibit 34-A and 34-B, 35-A and 35-B, 36, and 37 marked for identification.

Q. I show you two documents marked as Government's Exhibit 34-A and 34-B, and ask you if you would identify those, please, sir? A. Well, this is the 1965 and '66 list of substitute teachers.

Q. Are there two lists? A. Yes.

Q. Does one list contain all Negro names? A. Yes.

Q. And the other all white names? A. And the court a year ago said that we did not have to desegregate the faculty for that year; we separated the lists as we had been doing in the past.

Q. Could you tell us which is the Negro and which is the white? A. Well, I am sure this is the colored, because—

Q. Indicating 34-B? A. Yes.

Q. How can you tell that is the Negro? A. I am guessing by some of these streets.

Q. And— A. This is the white.

Q. —34-A would be the whites.

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Mr. Allen: I offer Government's Exhibit 34-A and B into evidence.

The Court: If I understand it, A is your list of white substitute teachers; B is your list of Negro substitute teachers; is that right?

Witness: That is correct.

The Court: All right; for '65-66?

Mr. Allen: Yes, your honor.

The Court: All right. It will be admitted.

Q. Now, I will show you documents marked as Government's Exhibit 35-A and 35-B, and ask you to identify those. A. That is the substitute teachers' list for last year or the '66-67.

Q. Now, there are—there are two lists there, also? A. There are two lists, because this was the year, really, that we got the order; that—we had been making them two in the past.

Q. Now, which is—these also all one—all Negro names

on one and all white on the other? A. That is correct. As far as I know, it is.

Q. And which is which? A. This is the white, and this is colored.

Q. You have indicated white as 34-A; is that correct? A. Well, whatever this one is.

Q. This one; all right. A. All right.

Q. And 34-B is the Negro list? A. That's right.

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Mr. Allen: We offer these into evidence.

The Clerk: 35, I believe.

The Court: It will be admitted.

Mr. Allen: I beg your pardon, those—that's right; 35-A and 35-B.

Q. Now, I show you Government's Exhibit 36 for identification, and ask you to identify that? A. This is the complete list of substitute teachers for '67-68.

Q. That is the one— A. Giving the telephone numbers, street address, what their subject preference is, and the number of years they have been to college.

Q. This is the one that is currently being used? A. That is the one in use.

Mr. Allen: I would like to offer this into evidence.

Mr. Robison: We have no objection.

The Court: It will be admitted.

Q. Now, I will show you Government's Exhibit 37 for identification, and ask you if you have seen that before? A. That is not ours; I have seen a State Department Directory; that is not—

Q. Well, can you identify that? A. Well, it says, "Educational Directory for 1966-67, authorized by State Board of Education."

Mr. Allen: I would like to offer this into evidence.

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Mr. Robison: If the court please, we would object to the introduction of that unless he can further show that it is pertinent to this case or Mr. McKee has a copy of it or that it—

Mr. Allen: Your honor, the purpose of this is it lists in there high schools by race, and we want to —for purposes of our—part of our case pertains to scheduling, we will have to identify the high schools.

The Court: Well, is there any question about it being official publication of the State of Alabama Department of Education?

Mr. Robison: I don't know, sir.

The Court: Well, do you state that it is?

Witness: Yes, sir; that is—I think that is the directory.

Q. Is it—

Mr. Robison: We have no objection, then.

Witness: Well, it lists Board members, superintendents, and principals, and people at State Department, but we have nothing to do with publishing that.

The Court: All right; it will be admitted, then.

Mr. Allen: I have no further questions of this witness, your honor.

The Court: Plaintiffs?

By Mr. Gray:

Q. Mr. McKee, I think you testified with respect to the fact that the three other high schools in the city provides

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transportation for rural children; is that right? A. I believe it was four.

Q. Four others. May I direct your attention toward the Lee High School, which is in the eastern part of the city of Montgomery; is that correct? A. That is correct.

Q. Now, basically, what rural children transportation would be afforded to these children? A. From the Atlanta Highway around to the Wetumpka—Lower Wetumpka Road.

Q. And what general area would, say, Lanier High School, that is on Court Street, that— A. From the Atlanta Highway around to the bridge on the River going to Birmingham, within, say, eight or ten miles out in the country.

Q. Say from the Atlanta Highway North? A. Well, clear around to the River bridge going to Birmingham.

Q. Or South from the Atlanta Highway? A. Well, you would come around Montgomery; the Atlanta Highway is the dividing line between the transportation.

Q. So then we will say students in the Southeast section of Montgomery who live in the rural, would they be transported to Lanier, or would they be transported to Lee? A. Well, it would—they would be transported—it depends on which school they chose; if they chose—they would be transported to either Lanier or Carver—

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Q. Now, do— A. —depending on their choice. Depending on their choice.

Q. Does the Board of Education provide transportation to the students who, say, choose Lanier: Let's take a Negro student who lives down the Woodley Road; now, does the Board of Education provide transportation for that child to go to Lanier High School? A. If he chooses it. If he chooses it.

Q. It does provide it? A. Yes, sir.

Q. Does it provide transportation for them to go to Lanier—I mean Lee High School? A. No.

Q. All right. Now, do you recall a conversation with some representatives during last fall with respect to providing transportation to—to Lanier High School from the Woodley Road area, and they were advised that the only transportation available in that area was transportation either to Carver High School or to Booker Washington High School? A. No, sir; I don't remember that.

Q. Do you have or is any transportation provided down the Woodley Road area to Negro students at all so far as Lee or Lanier are concerned? A. On the Woodley Road down to a certain distance, they have a chance to go or choose, and the buses go to Lee—I mean to Lanier or Carver.

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Q. Now, I think, Doctor, at the time the choice forms were sent out, it indicated on the forms which schools had transportation provided? A. It had an asterisk by the schools that had transportation provided.

Q. And is it your testimony, sir, that on those forms that were given to Negro children in the Woodley Road area, there was an asterisk indicating that they could have selected Lanier High School or Lee High School? A. No; it was—well, it—it showed both of them, but if they had

chosen Lee, we would have sent them a letter that from that area buses do not run to Lee High School, but there would be buses to Lanier or Carver.

Q. And you are sure that the asterisk was there for Lanier as well as Carver? A. Oh, yes; we have got some that are transported to Lanier.

Q. Now, let me ask you further with respect to transportation, and I want to direct your attention again to this area in the Southeast part of the city; now, students who live down the Woodley Road, Narrow Lane Road—there are some Negroes who live in this area; is that right? A. Yes, sir.

Q. And there are some of both elementary and high school age? A. And junior high.

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Q. And junior high. A. (Nodded to indicate affirmative reply)

Q. Now, let me ask you about transportation on the elementary level; do those students in that area—they were indicated on the form; what schools did it indicate transportation would be provided for them? A. In that area?

Q. Yes, sir? A. Goode Street and Hayneville Road, it had—of course, the form has all of them that have—but if there had been any question, those were the two that that would serve.

Q. Yes, sir; transportation was provided. A. That's right.

Q. Now, this area down here, you have some on five or six miles, southeastern part; now, where is the Hayneville Road Junior High School or Hayneville Road Elementary? A. Well, it is on the By-Pass right near the Reconsignment Point.

Q. But that is—actually, it is in the western, is it not—the western part of the city? A. Well—

Q. You mind, sir, coming around showing us where Hayneville Road Elementary School is? A. There it is. That is the Reconsignment Point.

Q. Here is the By-Pass. A. Right along in here.

Q. All right. Now, if you will, just stay here just a

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moment, sir. Will you make a mark about where on Hayneville Road is it? A. I can't find the Reconsignment Point; it is almost—

The Court: You will have to speak out so the reporter can hear you.

A. I said right across the street from the Reconsignment Point; I don't see that marked on here.

Q. This is the Western By-Pass right here, and Hayneville Road. A. I believe—where is—

Q. And here is the Hayneville Road. A. Fairview coming out.

Q. Mobile Road. A. Right here; it would be somewhere right along in here, I guess.

Q. Would you put a large mark and circle it; that is the Hayneville Road School. One other thing before you go back, if you will. Now, show us the general area where these Negro children live who must go to Hayneville Road School, east or west, for transportation in the southeastern part of the city. A. Any student that lives between the Atlanta Highway—wherever the Atlanta Highway is—

Q. That would be here. A. All right; on this side of the Atlanta Highway around on the periphery outside, he

would be transported to Goode Street or Hayneville Road if they choose the transportation.

Q. Now, would those children—would you show us where

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Goode Street is? A. It is—right in here; right there.

Q. If you will, make a mark and circle a large— A. (Witness marked map)

Q. Circle that. A. (Witness marked map)

Q. Thank you. Approximately how many schools would an average Negro child who lives on the either south-eastern or south—southern part of the city have to pass in order to get to the Hayneville Road School? A. Well, it would depend on which way he went; if he went—if he went around that By-Pass, I believe Harrison would be the only one he would pass.

Q. Let's go back to my example of down the Woodley Road. A. Well, I presume he would come up to the Woodley Road, to the By-Pass, and go right around, that would be about the best way.

Q. You have already got an elementary— A. Got Harrison.

Q. —already on Woodley Road— A. Have Harrison.

Q. Do you have an elementary school already on the Woodley Road? A. Not yet, no; we are going to build one out that way.

Q. Where is Bear School? A. Bear School is on the McGehee Road, right off the McGehee Road; I have forgotten the name of the street in front of it, but it is right there at the intersection of the McGehee Road and

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Woodley Road; I think there is a church, and they have the school.

Q. It is just about on the Woodley Road, isn't it? A. Well, it is on the Woodley Road, but it is a long ways from the edge of town.

Q. But it is south of the Southern By-Pass some four or five blocks; is that correct; on the Woodley Road? A. It is north of it—

Q. It is north? A. —toward town.

Q. North of it. Isn't there an elementary school on the Woodley Road that's south of the Southern By-Pass? A. Not on the Woodley Road.

Q. It is one on the McGehee Road? A. No; McGehee Road ends up there about the Montgomery Fair.

Q. Now, where is the proposed new elementary school to be built? A. It is in Spring Valley.

Q. And is that on the—approximately where would that be on this map? If you will, come and show us? This is the Woodley Road here. A. It is right along about just this side of Baldwin Slough.

Q. All right; make a little mark, if you will, Mr.—so that is the proposed new elementary school. And this elementary school is near a great deal—quite a few Negroes who live further down the Woodley Road and further down Narrow Lane Road? A. Yes; it is nearer to some Negroes and white people that live down that road.

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Q. All right; and you are saying that no transportation will be provided for these students, even though they live farther than two miles from this elementary school? A. This will only be a very small elementary school; we are constructing twelve or thirteen rooms, and it is built largely for—oh, it will be plenty of people within two miles of it.

Q. As a matter of fact, there is a new white subdivision

where that school is going up, isn't it? A. It is a new subdivision.

Q. And is there any logical reason why the school cannot be built large enough to accommodate these other students who live in the same general area? A. I am sure there will be colored students, plenty of colored students within two miles of that school.

Q. But I am saying, is there any basic reason, Dr. McKee, why that school could not be constructed large enough to facilitate children who live two or three miles further and who must now ride some ten to twenty miles a day to get to a school? A. Well, I doubt if there is any riding twenty; there might be some riding ten. Of course, money is always a problem; if you had enough money, you could build schools anywhere you want.

Q. That's right; as a matter of fact you are building and adding to—to the McIntyre Elementary School, aren't you? A. We have built a junior high there.

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Q. Built a junior high there; that is in a Negro pocket on the west side of town? A. We built it because the Government requested us; they were fixing to build this Gibbs Housing Project, and we had to write that letter that we would have enough schools that serve in that area.

Q. Yes, sir. A. And we have finished the building and operating the school this year.

Q. As a matter of fact, there has been additions that this Board has made to the Hayneville Road School since this court order has been in effect, hasn't it? A. Yes; we have—we had permission from this court to build some rooms at Hayneville Road.

Q. And it is these Negro children who is going to pass by this new school to go to Hayneville Road in order to

have transportation, isn't it? A. There will also be some white children that will pass by, too, if they want to ride the bus.

Q. So then there is nothing that the—if the Board wanted to, it could make this school large enough to facilitate the elementary school kids in that area, couldn't they? A. I don't think it would be big enough by next fall.

Q. Now, let me ask you this, sir; the high school students in this area, transportation is provided for them at Carver and Booker Washington; is that right? A. Trans-

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portation is provided for them at Carver and Lanier, Booker Washington when you get to the Atlanta Highway, when you get to—

Q. Yes, sir; let me direct your attention, now, to the new high school. And I think you testified that at all of the other high schools in the city, transportation is provided; is that right? A. That is correct.

Q. What was the criteria used by the Board in determining to provide transportation at these other high schools? A. It has been the policy of the Board for twenty years; when we first—Montgomery began growing that we left our transported schools where they were, and we knew that in the areas that were growing, that those schools would fill up with people that lived right around the school, and we have continued to transport; we have been transporting to Capitol Heights Elementary, to Goode Street, and Booker Washington Elementary, and now Hayneville Road; we used to could handle them at Carver until Carver got so big, and we had to build another building, and we have been doing that for years. And Pender Street is another school that has transported elementary children.

Q. All right; now, you have had and there is now going up at the Carver High School additional classroom facilities; is that right? A. There is an auditorium and a band room and a room for the R.O.T.C. and I believe a choral room.

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Q. Is there any real basic reason, sir, why this Board cannot provide transportation to students who qualify for it to this new high school? A. We feel that we have decide—that we would transport to the ones that we have been transporting to.

Q. Now, won't that—won't the effect of this be that many Negroes who don't live in the direct area of a school, but who live nearer that school, and doesn't it mean that you won't provide transportation for them, and they will have to go a long way— A. Well—

Q. —in order to get it? A. Well, as I interpret the court order, under the freedom of choice, if a—and I have the feeling there will be a large number of people choosing this as a new school, they would be turned away because of distance.

Q. Now, that wouldn't eliminate the problem so far as transportation is concerned? A. Well, I mean, what I am saying is, if the school was full at the end of March, then we have got to notify those that live the furthest away from the school, and that would be the ones—the transported people would be the ones.

Q. Is that why you are saying the Board decided not to have any transportation here? A. That is why the administration has decided; yes.

Q. Describe for the court, if you will, the general area where this—where this new high school is being built?

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A. Well, it is being built on Carter Hill Road between the old Green Lantern, or the Green Lantern Branch of the Union Bank and Trust Company, and Masonic Home.

Q. Is this a fastly growing area, populationwise? A. Very fast.

Q. And isn't it right in the middle of a very gross white population area? A. It is in the middle of a fast growing area.

Q. White people are the only ones live there except a little pocket of Negroes who—who—there are two or three houses right at the Masonic building and the Vaughn Road; there are very few Negroes out in that area; isn't that right? A. I don't know of very many; no.

Q. Sir? But I don't know when there will be some.

Q. And the nearest Negro families, except for this little pocket that is right at the Carter Hill Road, Vaughn Road, railroad and the church, there would be these Negroes that live down the Vaughn Road, Woodley Road, Narrow Lane Road, and this rural area to the east of Montgomery? A. Well, I would think that those in the Carter Hill area, on the Carter Hill Road area, would be nearer than that.

Q. What you mean— A. I mean—

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Q. —the area near— A. —the area in the Carter Hill Road where the Negroes are moving in and across Carter Hill and all in that area, there are some of them that would be closer.

Q. You are talking about the area of Carter Hill Road right around at the back of Alabama State College? A. That's right; and there is a good bit of movement there, colored people in the former white area.

Q. As a matter of fact, the area where this new high school is being built is a pretty—really, it is more the upper echelon than the lower income group of people that live out there? A. I see some pretty big houses out there—

Q. Yes, sir. A. —and there are some that is not so big.

Q. Now, let's talk for a moment, if you will, sir, about your other elementary schools. A. All right.

Q. And where is this other elementary school that is to be built? A. It is at Southlawn out in—on beyond the Mobile—intersection of Mobile Highway and the—and the—it is right in here.

Q. It is on the southern part of the city toward the west; is that right? A. Well, the south; it is south.

Q. South? A. I guess it would be a little bit west; yeah.

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Q. Now, is that in a new white subdivision? A. It is in a new subdivision; I don't know the composition of it altogether.

Q. And aren't there a substantial number of Negroes who live, say, more than two miles south of—of this new school down Highway 31? A. Yes.

Q. Going toward Hope Hull? A. That's right.

Q. And you have a—a densely populated Negro area in there? A. Of course, on that area, they have the choice of Pintlala or Hayneville Road.

Q. Now, do they have transportation to either of those? A. Transportation to Pintlala and Hayneville Road down the Mobile Road after—beyond this subdivision, after you get a few miles beyond that.

Q. No transportation is being provided at this particular school? A. Transportation this year provided to Pintlala and to Hayneville Road.

Q. Tell us, sir, has the Board actually revised its whole

transportation system so as to eliminate the dual system and to eliminate the overlapping of routes as this court directed in its order this summer? A. This Board—I mean we have had to change bus routes from time to time.

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Q. I am not asking you that, sir; I am asking you whether or not now, as result of this court order, all of the overlapping where you had white buses going to predominantly white schools and vice versa, has all that been eliminated? A. I couldn't say that all of it has; we—our buses, as we pointed out, serve these various schools, and they take the people that choose those schools.

Q. Now, do you understand it to be the responsibility of the Board to completely revise the transportational system from a dual system to a unitarial system? A. We—we do it in the sense that—now, our schools are not sitting side by side that they go to. For instance, the example I just gave you, Pintlala and Hayneville Road, the buses that have the children that want to go to Pintlala, white or colored, go to Pintlala. The ones who want to go to Hayneville Road go to Hayneville Road.

Q. Who in your office is responsible for the formation of and the outlining of routes to be sure that this court order has been carried out? A. The principal—the principal of the school is first, and then we have a Mr. Harris who is supervisor of transportation and Mr. Kirby who is the assistant superintendent in charge of transportation.

Q. Has the principal, say, of Carver High School and the principal of Lanier High School gotten together and decided on how to— A. No.

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Q. —have a transportation system so there will be no duplication? A. No; we have not done that, because you could not make a bus route—if you tried to get a bus into Lanier driveway and then go over and get into the Carver driveway, you would have children leaving home an hour earlier. We try to fix it where a bus will have to serve only one school if possible.

Q. So then actually, a—when—when it is left up to the principal to decide, he would be unable, really, to do it, because he isn't aware of what the other school does? A. Well, we know the impossibility of getting in these driveways, especially on rainy days, of these large schools, and we try to eliminate at all times where possible—

Q. Has the Board designated any particular person in your office and said, "The court has directed us to desegregate our school system, and I would like for you to see this is done"; has any such responsibilities been delegated to any particular person? A. We have tried to operate our buses in a way that we would serve the people to the best advantage and eliminated duplicate—we had very few duplicate routes, anyway.

Q. Then do I understand, sir, from what you are saying, nobody has been assigned that responsibility? A. Yes, we have all read the court order; we have the court order and have studied it, and we have tried to carry it out to the best of our ability.

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Q. I understand that, but no one has been given the specific responsibility? A. Not by the Board, because the court has already given the order.

Q. Well, I am saying, has any administrative assistant been assigned the responsibility? A. We have a—dis-

cussed it among the ones that handle transportation; yes, we discussed it.

Q. Let me be sure I understand your testimony, sir; is it your testimony that there is now no duplication and overlapping? A. Yes, there would be some; but, as I pointed out, so many of our schools are completely different, I mean not—they are not sitting side by side.

Q. Do you know whether or not—have you recommended to the Board that one way to accomplish desegregation of transportation would be to appoint someone responsible for seeing that this phase of the court order is carried out; have you made that recommendation? A. I haven't made that recommendation; it is in the court order; we handle it just like we have been handling it—I mean in our system. And yes, sir; our transportation man works with us, and we have many bus routes, buses that are integrated.

Q. In other words— A. In fact, we have one—we have had delegations call the Board and everything that got more Negroes on it and everything than it has whites, and we have had some problems on that bus.

Q. Now, let me direct your attention a few moments to

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your athletic program. A. (Nodded to indicate affirmative reply)

Q. What has the Board done toward desegregating the athletic program in the Montgomery County school system? A. The Board has let any child that is in a school go out for any type of athletics that he desires.

Q. That is within a school? A. That's right.

Q. Now, will you tell us whether or not there are in fact two athletic associations, one that is membership by the predominantly white schools, and the other membership by the predominantly Negro schools? A. I think

that is correct; I couldn't tell you the names of but one of them, but I think that is correct.

Q. Now, what has the Board done toward doing away with this dual athletic system? A. We have nothing to do with the athletic system, except our schools belong to it; we—we are—the Board does not contro[illegible] the Alabama High School Athletic Association or the one for the colored schools.

Q. Who makes up—but each of your schools—let's take the high schools; each of the high schools are members of the association; is that right? A. As far as I know, they are; we don't—

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Q. Each— A. That is handled by the principal of the school, but—I think all of them are, but I couldn't be positive.

Q. And all the white ones are members of the white association? A. I know that the white ones are members of the white association; I think that the colored are members of their association.

Q. And has the Board—and are the principals of the schools members of the association? A. The coaches are; I don't—I am not sure about whether the principals are; I know the coach would be a member.

Q. Now, has the Board given instruction to the principals of the schools or the coaches and directed them to take some steps toward desegregating or toward merging these two athletic associations? A. No; no, we felt that that is not in our field.

Q. Do you, as superintendent, and as you interpret this court's order, does the athletic—is the athletic program included as one of the items to be— A. It is, as I understand it, within that school, which we have carried out.

Q. You mean within the individual school? A. We have had Negroes to go out for football at Lanier.

Q. But you don't understand, or do you understand, the court order to mean that it goes further than once you get into school being able to participate in all of the activities? A. Well, we—we allow them to participate in all the ac-

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tivities of that school—

Q. Tell me, sir— A. —and we had—we had one game this year when there was six members of the colored race on an opposing team from Tuscaloosa that we played.

Q. Now, that school that you played was a school—predominantly white school? A. I don't know; that football team at that moment was predominantly colored.

Q. What school was it? A. Tuscaloosa.

Q. Sir? A. Tuscaloosa High School.

Q. You are familiar with Tuscaloosa High School, aren't you? A. Yes, sir.

Q. And you know that that is a predominantly white school? A. It has rather sizable number of Negroes.

Q. What— A. I would imagine more white; sure.

Q. Let me ask you, has Lanier, to your knowledge, ever played Carver? A. No; they haven't played Carver.

Q. Has Lanier played Lee? A. Yes.

Q. Has Lee played Carver? A. No.

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Q. Is there any plan, so far as you know, for Lee to play Carver? A. Not that I know of.

Q. Or Lee to play Jeff Davis? A. Not that I know of.

Q. Aren't you, or are you, familiar with the fact that the coach, the newly appointed coach, of Jeff Davis has indicated in the next couple of years they will probably play Lanier and Lee? A. I saw that in the paper; yes.

Q. That's right; did you—have you seen that they will also play Carver and Booker Washington? A. I haven't seen that.

Q. Now, let me ask you this; I believe, sir, you testified that the five persons who have been employed to go to the new school, Book—I mean Jefferson Davis High School, are all white persons; is that correct? A. That is correct.

Q. Now, did they, all except one, I think that was the band—proposed band director, did they all come from schools that were predominantly white schools? A. Yes.

Q. Has the Board considered employing any Negro at any—in any administrative position at Jefferson Davis High School? A. There won't be but one administrative position.

Q. Well, administrative or semi-administrative? A. Well, teachers; we are going to have plenty of teachers there.

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Q. You saying you are going to have plenty of Negro teachers at Jefferson Davis High School? A. Yes, sir; we are going to have some Negro teachers; we have been planning that all along.

Q. Plenty of them? A. We are going to have some.

Q. In your opinion, how many Negro teachers do you contemplate having at this school? A. I would say around seven.

Q. Seven out of probably forty, I think in your deposition— A. Well, that would be the most, if it—if it—it is somewhere between thirty and forty, I would say.

Q. Now, approximately how many of these seven are going to be floating teachers? A. I don't know that; we may not have any floating teachers—by floating teacher, I don't know what you mean. What we mean is a teacher

that doesn't have a permanent room; she teaches in this room when this teacher has an off period, and she moves to the next room when the next teacher has an off period; there may be some of those, but it won't be necessarily whether it be colored or white.

Q. No, I was thinking about something like your speech therapist in your elementary school, they teach here and then they go to the other school. A. No; there won't be any of this.

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Q. I think in your deposition, sir, you mentioned that the funds for the athletic program of all schools, including the new school, must be raised; is that correct; and it is not provided by the Board? A. That applies to new and old.

Q. Yes, sir. Do you know what steps has been made toward raising funds for the band uniform and—and the athletic equipment for Jefferson Davis High School? A. I know nothing except what I have read in the paper, because that is a matter we leave in the hands of the principals or the band director and the coaches, and either through gate receipts and borrowing the money and paying it back later.

Q. Are you familiar with a meeting of persons from Montgomery at the Governor's House Motel where they met for the purpose of raising some funds for the new school? A. First I knew of it, I read it in the paper.

Q. It has been called to your attention? A. I saw it in the paper; yes.

Q. Do you know whether any Negroes were invited to that meeting? A. I could not say; I was not there.

Q. Do you know whether—has there not been additional meetings of interested residents who have been notified

and advised about meetings of the new Jefferson Davis High School? A. I am sure they have; there usually always is when we open a new school, they will get up money for things that the Board can't provide

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Q. Do you know whether any of these persons or any Negroes have been contacted or invited to participate? A. I do not know.

Q. Did you, in giving your instructions to your new principal, tell him that, "The school is going to be open, and all of your planning phases, we would like for all members of the community to be a part of it, including Negroes"; did you so advise him? A. We advised him and gave him—he has a copy of the court order that this—and we told him at this time that this faculty would be integrated.

Q. I am not asking you, sir, about the faculty; I am asking you whether you informed the coach—I mean the— A. We told him that his student body would be made up of freedom of choice and that he would know about it at the end of March.

Q. But did you inform him that in the planning stage where you were going to the people of the community, to invite some Negroes, too, to participate in the planning? A. I am sure that he—we—we left that up to him; we do not instruct him.

Q. You didn't give him any instructions about it? A. No, sir.

Q. All right; let's talk a moment, sir, about your coach. At the time you employed the coach for the new school, did you advise him that he should consider playing some formerly all Negro schools? A. No, sir.

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Q. Did you advise him that if he saw fit, so far as trying to get his team together, to—to consider Negroes? A. You mean Negro schools or Negro players?

Q. Negro players. A. We told him he would—anybody that went to Jefferson Davis School would—could go out for football.

Q. I am saying, did you particularly say anything to him about the racial problem because this is a problem? A. Well, he has been at Lanier; he knows all that this—he has been at Lanier, the new coach has been right there at Lanier during all this time.

Q. You saying you didn't tell him anything about it? A. We also told him that we could not solicit any players to exercise the freedom of choice and gave him a copy of the court order, that particular section about no official will have any influence on the choice a student makes in the schools they attend.

Q. Are you, sir, familiar with what has been reported in the newspaper that the city of Montgomery has been divided into three zones so far as eligibility of athletes going to Jefferson Davis? A. I have not heard that at all.

Q. Did you—you didn't read that in the paper? A. If I did, the paper was in error, if it was in the paper; I did not read it, but if it was in the paper, it was in error.

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Q. Do you recall anything at all or have you discussed anything at all about the eligibility— A. Yes.

Q. —of—of—of—of—of students who will attend Jefferson Davis High School so far as being on the team is concerned? A. Yes; we have discussed that.

Q. You discussed that? A. (Nodded to indicate affirmative reply)

Q. And wasn't something said in that discussion that if the students who were going to Jefferson Davis lived in a certain area—and there are zones of this—that was nearest to Jefferson Davis High School— A. It is not a zone.

Q. Well, let's—let's call it whatever you want; there was some geographical area that if the student lives in that area and wanted to go to Jefferson Davis, then he would be eligible to play on the team the first year? A. According to the Alabama High School Athletic Association, if he had attended Lee or Lanier, which are members of that association, he could not play at the new school the next year unless he lived closer to the new school than he did to the one that he was presently attending.

The Court: You mean the Alabama Athletic Association has the right to determine who is eligible to participate in school activities—

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Witness: They have the right—

The Court: —in the Montgomery schools?

Witness: They have the right in the athletics.

The Court: Who gives them that right?

Witness: Well, of course, it is a body of coaches, and I am not sure whether the principals are members. They say you got to make a certain grade to play; if you make under a certain grade, you can't play. If you are over a certain age, you can't play, or if you—we had down at Ramer this year, our—that team had a bad year up until this year, and it won nearly all the games, but they got thrown out because they played a boy that has been playing five years, and they can't play him but four years. That is the kind of regulations they have.

The Court: How do they penalize the school that doesn't adhere to their rules?

Witness: Well, they forfeit all their games.

The Court: Throw you out of the association, and they won't let you play any other team that belongs to the association; isn't that it?

Witness: I believe that is correct; yes, sir.

The Court: Well, maybe they ought to be a party in this lawsuit.

Mr. Gray: Yes, sir.

The Court: If they have that much authority over the operation of the schools in the athletic program.

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Witness: Now, in this matter, we had explained—

The Court: I gather it is authority that is just granted to them by the schools, themselves, though. Maybe they shouldn't have any standing in the lawsuit at all. I don't know. That just seems like it flies in the face of certain provisions in this court order for these schools to continue to belong to an association that is organized and operated strictly according to racial lines and the schools get penalized for playing schools that don't belong to an association that is predominantly of the same race; and at this point, I hold the school authorities responsible for seeing that it doesn't happen. I will go into that more in the order that I enter in the case.

Q. Do you know, sir, when this regulation was passed by the Athletic Association? I am sure it would have to have been passed after there was some question about the membership of the new schools in the association. A. As

I understand their rule prior to this was that if you started in a high school in a city, then you had to play out your eligibility in that high school, and, of course, there is always a lot of problems, pressure, about one group trying to get the boy to leave this high school and go to the other one. Of course, I know that is what they are trying to attempt; they are not trying to work on this other, I don't think, but in this particular case, I think they had maybe one other opening school, and they had an old rule that if he lived in that district, you could go

there, but now, they just—they made that rule, I think it was a month or so ago; I am not sure exactly how long.

Q. Now, let me ask this; is the Jefferson Davis High School already a member of the association? A. It is my understanding it is not.

Q. It is not a member; but it is governed by its rules and regulations? A. It is—it has—they have discussed being a member, and am sure they plan to be a member.

The Court: Of the white or Negro?

Witness: The Alabama—it is the white.

The Court: Well, why did they select the white before the students selected the school?

Witness: Well, they haven't actually selected it yet.

The Court: That brings me to another question; why do you select all white coaches before the students select the school?

Witness: Well, as was mentioned, one of the hardest jobs that we have in athletics is to raise the money to keep it going. We felt first that Mr. Livings who had coached on the Lanier staff for a good many years—

The Court: Why didn't you select a Negro assistant coach or maybe two?

Witness: We felt, Judge, that in this transition, we tried to work on this thing—

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The Court: I have gone along with this transition business for a good long while, but we have passed the transition period.

Witness: I understand that, but we felt that it would be better not to have them on athletics to start with and that we would—we plan to put—

The Court: This is not a new school system; this is just an addition to an existing school system that has been under an injunction for several years—

Witness: Yes, sir.

The Court: —to eliminate the dual school system. I am concerned about the conduct of the Board in permitting this to happen while they are under a court injunction.

Witness: Well, Judge, I—if I may say this, we have had a—a lot of problems we have had. Now, there is about thirty-two that have crossed over. We have had to put real close supervision; we had police protection for several weeks; we have gone in there and watched it, and we plan to start next year to desegregate all of the faculties in the city.

The Court: We are going to do that.

Witness: We want to do it peaceably, and I know you want it done that way, and where it will not be—

The Court: We are going further than that, I think, Mr. McKee. We are going to desegregate

some athletic programs, too, if they continue. Let's go ahead.

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Mr. Gray: We have no further questions.

The Court: Go ahead.

Cross Examination by Mr. Robison:

Q. Mr. McKee, in connection with this Athletic Association, is that association, as you understand it, similar to, say, the Southeastern Conference, requirement to be a member of the Southeastern Conference or the Atlantic Coast Conference, the Pacific Coast Conference, or any other—Southwest Conference, or any other football conference? A. It is similar to that; I don't know its—all their rules, but they—they have rules of eligibility and grades and how many players you can have and various things of that type.

Q. Do you know what the constitution or the by-laws of that association consists of; you are not familiar with that, are you? A. No, sir; I am not.

Q. Is it your understanding that if a school is to play other teams that are in the conference, they must belong to that conference? A. That is my understanding.

The Court: Where do they get—where do they get the authority to enforce this rule?

Mr. Robison: If the court please, I am not familiar with the constitution and by-laws, but I guess it would be similar to Southeastern Conference, just like Georgia Tech withdrew from that and don't belong to it; if they don't abide by those conference

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rules, then they withdraw from that association.

They set up, as has been said, certain rules and regulations with respect to eligibility of the individual players to play. It is my understanding, and we have only had an opportunity to briefly look into this, but it is my understanding, also, that there is no race restrictions within the association, of either association.

The Court: Well, why have rules?

Mr. Robison: The question?

The Court: Why have two associations if there is not—

Mr. Robison: Well, that, sir, I am not prepared, as I say, to answer those questions.

The Court: I suppose we will have someone here from that association?

Mr. Gray: Executive Secretary is here, your honor.

Mr. Robison: Of both of those associations, if the court please.

The Court: All right; go ahead.

Q. Mr. McKee, insofar as recruiting players at the Jefferson Davis High School or at any oher high school in the system, do you know of any recruiting that goes on to influence the choice of a student with respect to the attendance at a school to play football there? A. I do not know of any, and, of course, our people know that it is a violation both of the court order and of—a violation of the—either of the associations; I think both associations

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have the same rue in there about recruiting.

Q. To your knowledge, has any assignments or designation been made of any students to attend the new high

school, either by the principal or you or any official of the school system? A. No, sir.

Q. Is Lee and Lanier and Booker Washington, Carver, and all the schools that are in the Montgomery County system, they are under this court order, of course, are they not? A. Sure.

Q. And they are playing football at the present time? A. Yes, sir; they play in the fall.

Q. Sir? A. In the fall.

Q. In the fall; all right. Now, Mr. McKee, I want to talk about transportation just a moment. Is transportation available in a given area for a child to have an opportunity to attend—any given area to attend a school either predominently white or predominently colored? A. In the county; yes.

Q. In the county in any given area? A. That is correct.

Q. By choice, a child may be transported to a school of either race if they live within a given area? A. That is correct.

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Q. All right, sir. Now, in sending out the choice forms, did you designate last year the schools that were being transported or area that were transported? A. We had an asterisk by all schools where there was any transportation from certain areas of the county, I believe is what the footnote says—

> The Court: Let me interrupt you here: Now, on the new school, the Jefferson Davis School, will that also apply; will you give them an opportunity, say from Booker Washington to the Jefferson Davis School?
>
> Witness: We had not planned to have any transportation at Jefferson Davis.

The Court: Well, do you have transportation at Lanier and Carver?

Witness: At Lanier and Carver.

The Court: And you have it at Washington and Lee?

Witness: No, sir; we have it at Lanier.

The Court: Why haven't you planned to have it at Jeff Davis?

Witness: We had found that if you are going to try to go to four or five or six different schools, you are going to have the kids up so early in the morning to get there—they have to get up early enough as it is. At Lanier, we have this Vocational Agriculture unit which we figure a lot of the rural children want access to and have chosen because it is there; it is the only one I know of that is in a city.

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Q. In setting up your transportation, Mr. McKee, have you done it in mind so as to permit any—still any child in the county exercising a freedom of choice, to be able to go to a school minority—of a minority race? A. That is correct; and also, if he furnished his own transportation, he had the right to choose any other school if there was space available.

Q. What is the two-mile requirement with respect to transportation? A. The State will not reimburse you, or they don't pay it all, but they pay part of the cost of transportation for pupils that live over two miles from a school.

Q. Do you provide any transportation in the city of Montgomery? A. There might be some in the fringes or certain areas that at one time was out of the county and in the city, there might be in—little bit in certain edges, but basically, not any to amount to anything.

Q. And the two-mile area, if a child is within two miles of any given school, there is no allowance for transportation— A. That is correct.

Q. —is that correct? A. That is correct. In other words, if we were a separate city and county school system, like Jefferson County in Birmingham, we wouldn't have any buses. We would just have Montgomery city system. I don't think any of the city systems in Alabama

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have any buses, but we happen to be a combination, so we do for the county what the county school system would do, and try to do for the city what they do.

Q. In deciding which schools will be transported and which ones will not be a transported school, what factors do you take into consideration? A. Well, of course, we had taken into consideration space, and when possible, it's —we—we have had Capitol Heights Elementary for a good many years, it has been a transported school; Highland Gardens is a transported school, and Goode Street.

The Court: Are your four high schools transported schools?

Witness: Yes, sir.

The Court: What would it require you to do if—if the court ordered you to provide transportation to Jefferson Davis on the same basis as you provided it for your four existing high schools?

Witness: Well, it would mean, Judge, that a bus coming up the Wetumpka Highway, if—from that area would be very hard to get over there. It wouldn't present as much of a problem for the Carver or the Lanier thing, but it would present a problem of having another school to serve, taking

part of them into one and then going on to another one.

The Court: Go ahead.

Witness: And getting tied up in all that traffic,

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and it is terriffic.

The Court: Go ahead. Go ahead.

Mr. Robison: Excuse me.

Q. You do not propose to transport any whites or colored or any children at all to the new school under the present plan? A. That is correct.

Q. By comparison, what is the size of the new school at Jefferson Davis as compared with Lee or Lanier? A. Well, the new school, as it is at present, about somewhere between eight hundred and a thousand, depending on the subjects that they chose.

Q. And as compared with Lanier and Lee, would it be much smaller or comparable— A. Much, much smaller.

Q. —to it? Now, in determining—after the freedom of choice period, in determining the eligibility for attendance to the Jefferson Davis High School or Lee or Lanier or Booker Washington or any others, if there is an overcrowded condition, what is the only criteria that you use? A. When it is an overcrowded condition—

Q. Yes, sir. A. —is distance.

Q. Distance would be the only factor that you would use? A. Now, there is another point that I did not bring about the transportation; we have the feeling that there is going

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to be more space, and there are more white children involved, there are many more white children in that area being transported than there are colored children, and

that Lanier will more than likely have the space than would Jefferson Davis.

Q. Than would Jefferson Davis. A. See, it is a modern area which is pretty heavily populated with white people.

Q. Now, explain to me that, Mr. McKee, as to what you anticipate insofar as white vacancies or white children that will be transported to Lanier? A. Well, at present, there is some three hundred and fifty or more children transported to Lanier.

Q. And do you anticipate, with the opening of the new school, that it would affect materially the transported children to Lee or Lanier—I mean to Lanier? A. My—my honest opinion is that they would be caught in being turned down when you apply the court order that says those that live the furthest away.

Q. Who would be caught, Mr.— A. All the bus children if we were to send some bus children to Jeff Davis, because they would be the furthest away.

Q. They would be the furthest away. A. And I—

The Court: That is assuming that you have enough choices—

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Witness: Yes.

The Court: —to overcrowd that school?

Witness: I have a feeling with the new school there is going to be some choices—I mean going to be some people from all over town.

Q. Mr. McKee, in connection with choosing a new school, is the fact that it is a new school a faculty—a factor that would affect choices by anybody in the system to go to that school? A. I would think so. Especially tenth grade; it

is going to have a great effect on them; I am expecting a much larger tenth grade than any of the rest of them. A few seniors may stay where they are, but I am expecting a heavy enrollment in the tenth and eleventh grade.

Q. Now, Mr. McKee, in paragraph four of the motion that the Government has filed, this statement is made; "During the first grading period, defendants had approximately a hundred and fifty student teachers working in the Montgomery County system, none of whom were assigned to a position where their race was in a minority." Do you have any grading periods in—in student teachers? A. Well, that depends on the college that they attend; I presume they are talking about the time that they were there. Now, Alabama State is on a semester system, and they have some student teachers the first semester and some the second semester. Auburn is on a quarter system; they have some the first—fall quarter, the winter quarter, and the spring quarter. Troy is on a quarter system.

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Huntingdon is on the semester system. And, of course, we are doing this to help the colleges out. We would just as soon not have any student teachers, and sometimes we get so provoked with it that we think maybe we will quit fooling with it. But we know teachers have got to be trained, but it is a voluntary act on our part that we do, and we thought that starting off this fall, we had our hands full with the faculty changes, and then we started this modest change in student teachers; this second semester, we will probably—I don't know, we haven't seen the list yet, I haven't, it may be in—but we will have some Auburn students coming in in the spring, we may transfer some of those.

Q. At this particular time, Mr. McKee, in the school system recruiting of teachers and in selection of the faculty,

is this a very critical and crucial time in the school system's life to establish a—selected faculties? A. This is—this is a very critical time, because so many of our teachers that know today that they are going to resign, but they won't tell us, both races, and we can get better teachers right now than we could any other time, but if we don't have vacancies, we can't go out and hire a six thousand dollar teacher when you don't have a vacancy, so it is important now that—any vacancy that we do have that we be able to fill it. Now we are having a—still having—we have gotten a few more than I thought we would have been able to have gotten when we were in court before,

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white teachers to accept assignments in colored schools.

Q. Mr. McKee, are you also at this time visiting various colleges that—teachers' colleges and the universities of the State in an effort to screen teachers or to select teachers? A. In this area; we don't go up in North Alabama, but in this area; yes.

Q. And is that going on at the present time? A. That is going on at the present time.

Q. Mr. McKee, have you canvassed your teachers at this time to determine as best you can whether or not they intend to remain with the system? A. They have been sent a slip to sign; I believe it is to come back next week sometime; some of them are already, but I think they have until the end of next week to make up their mind.

Q. As to whether or not they intend to remain with the system or to leave the system? A. That's right; and if they say they are not, of course, we immediately try to fill that place. If they say they are not sure, you can't do anything about it until they get sure.

Q. On September 22, a report was made to this court

showing the faculty assignments at that time. Since then, since the filing of that report, what additional faculty desegregation has taken place? A. Well, at Lanier, the two student teachers have been added; at Lee, two student teachers have been added; and at Loveless, we have three

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white teachers—in fact, we hired four, but one of them quit, one of the white quit, and we replaced with a white, so actually, we have three there now, but we actually hired four teachers in that process to go to colored school. We have two white teachers at Paterson, and, of course, we have one more at Goode Street, and at Mac—it was really two more, because in our report to the court, we failed to count the principal which we had been counting in the others, and at McIntyre Junior High, we had two, but they were in there, I believe, when the court was there, Hayneville Road, one; and we have added a colored speech therapist that works in all schools, and then Mr. Garrett hired a white teacher to fill a place at Fews yesterday.

Q. And Fews is a—predominantly a colored school? A. Yes, sir. What we are—we have been working ever since school started that any vacancy that we had in the colored school, we have tried to fill it with a white teacher, and we have succeeded in every case except one. We was not able to fill that one. Then next year, we felt that we would start in the white school.

Q. What plans do you have insofar as desegregation of faculty is concerned in the next September system—semester? A. We plan to desegregate the faculties at all schools in the city. We did not—have not tried to put any colored teachers further in the white schools this spring, because we felt, communitywise, it would be better to do that all at one time, that is, where every school—every white—

former white school would have a colored teacher in it;

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then the community wouldn't say we did this to them—did this to us and didn't do it to them. We plan to start that; as soon as we get that, we plan to go around and just keep on until we get to where we have substantially desegregated faculties. We—we want to do it very carefully; we want those people in both races that transfer supervised very closely. Our supervisors are asked to stop by and visit those many times more than they do the other situation; they may not even be visited in that school; I have done it myself—if I pass one of these schools where we had faculty integration, I will go in there and watch in on those two rooms. We have tried to be so careful, that we not have an incident that cause a blowup here in Montgomery. Our school system is too important to us; it is too important to Montgomery. And we think that we are going to get this thing desegregated, and we are going to do it peaceably and keep our school system.

Q. Do you have any plans insofar as further faculty desegregation of the high schools? A. Yes; we plan to put others at high schools as vacancies and change arise. Another thing that we have done this year that I think has had a great effect and will help us in the future, we have had for a number of years what we call observation lessons where outstanding teachers will teach a lesson and other third grade teachers or other sixth grade teachers or other science teachers will come. This year, we have had those

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in both former white schools and in the colored schools. They have—sometimes they would have been taught by a colored teacher, sometimes by a white teacher. The audience or the teachers visiting these observations would be

made up approximately fifty-or sixty-forty or fifty-fifty, somewhere in that neighborhood, there would be some of both races; then at the end of the lesson, they would meet together and discuss the good points and the bad points of the lesson. And that was done integrated.

Q. Is that what you would refer to as an in-service program or instructional meeting? A. That is part of our in-service program; yes.

Q. Part of your instructional meetings? A. And we especially anxious to have some of our new teachers at that, because that gives them a chance to see a master teacher at work.

Q. With respect to the administrative council, what action has been taken by this Board? A. It has been completely desegregated.

Q. And what is the administrative council? A. It is when matters come up that meetings of principals, supervisors, and superintendents have to be held, it is held. We hold them either at Houston Hill School or at Lee High School.

Q. Is Houston Hill predominantly colored? A. Yes; it is.

Q. And Lanier predominantly white? A. Well, it is

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Lee High School.

Q. Lee predominently white? A. (Nodded to indicate affirmative reply).

Q. And those meetings are held at those two schools? A. (Nodded to indicate affirmative reply).

Q. What about your teacher institutes, Mr. McKee? A. They were completely desegregated.

Q. They have been completely desegregated? A. Members of both races taking part on the programs of the institute.

Q. Do you interview the teachers, Mr. McKee, or is that largely done by your associate? A. That is largely done by Mr. Garrett.

Q. Have you and Mr. Garrett discussed what would be said to these teachers that were being interviewed for employment with respect to the type of school system being operated in Montgomery? A. Yes, they have, and it is printed on the application blank, plus they are asked the additional question if they would accept a job, and Mr. Garrett has had the experience of some of them saying they would, and then when you offered them the job, they would say, "Well, I will let you know tomorrow," and they would go home, maybe talk to their husband, and some other people, and come back and say, "I can't take it."

Q. Have you all taken affirmative action to encourage faculty desegregation and, in the interviewing of pros-

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pective teachers, to encourage them to take assignments in schools where the opposite race is a majority? A. We have, and Mr. Garrett reports to me that in their visits to two of the colleges, they have some students that say that they will accept this, and we are going to certainly give them a chance to see if they meant it.

Q. What changes have been made to desegregate the student training program since the court order?

The Court: May I ask at this point, has your faculty assignment been on the basis of whether the teachers would agree to it or not up to this point?

Witness: Up to this point, and we hope, Judge, that we can keep it that way, because regardless, if it wasn't a racial problem, when you make somebody change to go somewhere to work that he is

not happy about, he is not going to do a very good job.

The Court: Have you read the orders—

Witness: Yes, sir.

The Court: —the courts have entered in these other cases that say that—

Witness: Yes, sir.

The Court: —that you cannot rely on voluntariness, it must be by assignment to accomplish the purpose of faculty desegregation?

Witness: I have read it, but I don't believe that that would keep the teacher from quitting.

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The Court: Well, if your teacher is not willing to teach in any school, and he is prejudiced to that point, you don't want that teacher in the system, do you, you are operating?

Witness: We have so many; we have so many.

The Court: Maybe this would be a good opportunity to get rid of them. Let's go ahead; let's go ahead.

Q. Mr. McKee, do you realize that the Board has the authority to assign a teacher to any school? A. We have the authority to assign them; yes.

Q. You also, as the Judge has asked you, realize that the assignments under the court order can be made irrespective of the desire of the teacher to teach in that school? A. That is correct; but I would hate for my child to be in a room with a teacher that did not want to be in that school.

Q. In the canvassing of your present teachers or in the interviews with present teachers and with the prospective new teachers, have you tried to determine which ones,

though they might not desire it, would accept a transfer? A. Yes; we have tried to determine that.

Q. Mr. McKee, have you solicited any funds or any personnel to raise funds in connection with the opening of the new school—high school? A. We have—we have hired the people, but we have not given them direction; they know that—they have been told that there would be no Board of Education funds for athletic equipment, band uniforms,

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and things of that type; there would be funds for library books, there would be funds for desks and teaching materials of that type.

Q. Does the Board of Education provide any funds for football uniforms or football equipment or basketball equipment or band equipment? A. No. That—those are what we call extracurricular activities; no child has to participate in them; it is purely a voluntary program.

Q. Mr. McKee, do you realize that under this court order, you have an affirmative duty to take positive action to desegregate not only the school students, but the faculty? A. Yes, sir.

Q. Have you attempted to carry out that order as best you were able and maintain a school system? A. We certainly have.

Q. Will you continue— A. We will continue—

Q. —to be—continue to be aware of that affirmative duty and take further positive action to desegregate the staff, faculty, and student body? A. We certainly will.

Mr. Robison: I believe that's all.

The Court: Redirect, Mr. Allen?

Mr. Allen: Just a few questions.

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Redirect Examination by Mr. Allen:

Q. You testified that all the schools—all of the high schools in the city are presently member—members of the —one of the two Athletic Associations; is that right? A. I think they are; yeah.

Q. And all the white schools are members of the white Athletic Association, and all the Negro schools are members of the Negro; is that correct? A. I think that is correct, yes, sir.

Q. And you have always permitted this? A. Yes; we have permitted it.

Q. Have you taken any steps to change it? A. No; I didn't—I didn't interpret the court order as about the Athletic Association.

Q. Now, you leave the scheduling of athletic contests up to the individual schools; is that right? A. Usually, it is —it is a mutual thing between the two schools that are going to play each other.

Q. Right; and the people who actually arrange the schedules are the principals and/or the coach? A. That is correct.

Q. Right; and they are employees of your school system? A. That is correct.

Q. Now, just one thing about this two-mile rule; I be-

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lieve the minimum program rules of the State of Alabama provide you with transportation money for those pupils who are transported, who are actually transported, who live a—greater than two miles from the school; is that correct? A. That is correct. I believe.

Q. It is not based on whether they live in or out of the

city; you get the money if they— A. Yes; but the point I made earlier, they don't give us enough money, so we don't feel that we can do it except in the rural area.

Q. Right; but it is— A. We could get some money toward it if we—but we wouldn't get all of it.

Q. Right; but they would count a student as a transported student— A. Two miles is all it says in there.

Q. That's right; even if he lived within the city? A. That is correct.

Q. Okay. A. But the Montgomery system could not afford to transport it on that kind of a basis—

Q. No. A. —not forty thousand kids.

Q. Does the Montgomery County system— A. Not that many would be two miles.

Q. Does the Montgomery County system operate solely

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with the minimum program funds? A. Well, we—we have several mills of property tax and one cent gasoline tax, and we get some federal funds; much of it is earmarked for special programs.

Q. But you do put a substantial portion of local funds into the school system? A. Well, I won't say substantial what we put, I guess about twenty-five—twenty or twenty-five per cent, we don't—we ought to have a lot more local funds than we have, but the last two elections, we tried to get the people to vote more taxes, and we were not successful.

Q. Do you hire teachers in excess of those allotted to you by the minimum program? A. A few; yes.

Q. Now, you testified that Jeff Davis would be probably much smaller than Lee and Lanier; would it also—what would the size be with relationship to Booker and Wash-

ington—Washington and Carver? A. Carver is larger, and Booker Washington would probably—Booker Washington running around eight, eight fifty, nine; Carver is thirteen or fourteen hundred at the present time.

Q. Are the four existing high schools in the city now overcrowded by your standards? A. Yes; I would like to have a little more space in all four of them.

Q. What was the reason for building additions to Carver

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High School, rather than making a larger school at Jeff Davis? A. The main reason there, we were building an auditorium which we had not—and we were building an auditorium, and while we were building the auditorium, it has a band room, and when we were approved for the R.O.T.C. unit, we put the riflle range and the R.O.T.C. room under the stage, it was a very convenient place to put it, and I believe there is a choral room, so actually, there is not much more teaching room there.

Q. Didn't you testify at your deposition that these additions out there, although they were not classrooms per se, would give you a—would be— A. Oh, yes.

Q. —give you a lot more room? A. You take the space where you were that you have—

Q. Right. A. —but the space in one or two of those places where they were, like at Lanier and at Carver, there is not a very good space, so that probably would be used for something else now than teaching.

Q. Just one other thing about the grading period; you do have a grading—in other words, your school system? A. Yeah; we send report cards out every six weeks.

Q. And you also have two principal grading systems, one semester—first semester and the second semester? A.

Well, it doesn't—really doesn't mean much; we give out report cards every six weeks.

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Q. When you testified at your deposition that you had about a hundred and fifty student teachers during the first grading period or the first semester, what does first semester mean, your first semester? A. The student teachers go by what their colleges had; Alabama State goes on semesters, and they will send us some student teachers at the beginning of their second semester. Auburn will send us student teachers at the end or the beginning of each of their new quarters, which may be even in the middle of a grading period of ours. Troy does the same thing. Huntingdon has semesters. Now, Huntingdon semester may be at a different date than Alabama State.

Q. Well, I understand that; but I am trying to establish measurement; when we say a hundred and fifty student teachers during a semester, we are talking about your semester, not the college's semester; now, is that—is that correct? A. Well, we have four, and I would think it would—there would be somewhere—I just don't know for sure how many there would be during this last semester, because Auburn hasn't sent theirs in for the last quarter, see, theirs haven't come in yet.

Q. Who is in charge of getting out the publicity for the new Jeff Davis High School? A. Nobody; they—the papers have been calling us; they want publicity on any kind of new school here; they just run us crazy asking when we are going to announce the coaches, when we are going

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to announce the school zones; we told the papers we did not have any school zones, we had freedom of choice; and

just about every day they call up, "When you going to do this?"—write a story of Jeff Davis. I see you have two or three in there.

Q. Do they get their stories from you or— A. They get some; not the one about the thing—about the Governor's House. They got a little information from me one time about when they had a picture of the building, but as far as the athletic program and that, they have not called me on that.

Mr. Allen: I have no further questions.

The Court: Mr. Gray?

By Mr. Gray:

Q. I think, sir, you mentioned that about the choice forms and on these choice forms there was indication about transportation; do you have available a copy of the choice form for the school year '67-68? A. No; I was not asked to bring one; I don't have it.

Q. You don't—you don't have one? A. It is just an alphabetical list of the schools and the address of the schools, with an asterisk by any that have transportation from certain areas of the county.

Q. Could you make a copy available for us? A. Oh, sure; we got plenty of them.

Mr. Gray: I think it would help the court, your

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honor, with leave of the court.

Witness: We have not made one for next year—

Mr. Gray: I understand.

Witness: —but we got one of last year's.

Mr. Gray: So that the record would be clear

exactly what it provides, I think if the court had a copy of the choice form for last year, it would help.

Witness: It is patterned right after the form of the court.

The Court: All right; if there isn't one now available, you may obtain one during the noon recess; that will be all right.

Witness: All right.

Mr. Gray: All right, sir; and we would like to at that time introduce it.

The Court: Go ahead.

Q. At the present time, are there any Negro teachers teaching on the elementary level in formerly white schools? A. No; we—we only desegregated the four senior high schools, started in the high schools, and then, as I said earlier, we started desegregating in the colored elementary schools, because we were able to find some white teachers that would take it; we have not found any serious objection from the colored communities. We have decided we would wait until next fall to start the desegregation of the rest of the city schools, and we could do all of it at once.

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Q. And no Negro junior high school teachers in former white schools? A. Nothing but the two senior high schools.

Q. Now, you testified about the observation schools that you had; now, were there any Negro teachers conducting observations in white elementary, junior high schools? A. No, they do their teaching of their own children, and the people come to visit them; I was at Carver this week when they had a demonstration there of a science demonstration—see, they are teaching their own children.

Q. Oh, and the teachers come in? A. The teachers come and visit.

Q. Now, have Negro teachers been invited to white elementary schools? A. Yes, sir; yes, sir; every one we have ever had, high schools, junior high, senior high, have been approximately fifty-fifty, sixty-forty, white and colored teachers—

Q. All right. A. —and approximately the same number of colored teachers have taught demonstrations as white teachers.

Q. I think one final question, sir; how was the name, Jefferson Davis, selected for the new high school? A. All —every request that I had—the only two requests that we had for names—and there was only one other one, the other one was Hank Williams, only two, everybody agreed Hank Williams—in fact, some of the kids nicknamed it the

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Green Lantern High School—

Q. I have no— A. —only official requests we had were those two.

Q. Who made the requests; are you saying this just was a community request? A. Well, we had letters and we had telephone calls and things like that.

Mr. Gray: I have no further questions.

A. Just individuals; it wasn't any groups that I know of.

The Court: Mr. Robison?

Mr. Robison: We have no further.

The Court: Do you have anything further?

Mr. Allen: No, your honor.

The Court: What is the—what is your student population this year in your Montgomery system, Mr. McKee?

Witness: Approximately forty thousand, not quite.

The Court: And what percentage of that is Negro?

Witness: About sixty-forty. However, this year, Judge, we have lost four hundred students, and usually we have been gaining from four to six hundred each year. I think there was some dropoff because of not knowing about assignments of faculty.

The Court: All right.

Mr. Gray: Just one other thing, your honor, if I may inquire, it will just take me one or two questions.

By Mr. Gray:

Q. You have a night educational program, don't you?

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A. Yes.

Q. At Lanier, Carver, Booker Washington— A. And Lee.

Q. —and Lee? Now, are there any Negro teachers teaching at the predominantly white schools at night? A. I don't believe there are.

Q. And are any— A. There might have been one quarter, I am not sure, I don't—

Q. —any white teachers teaching at night at your predominantly Negro schools? A. There could have been; I am not sure—

Mr. Gray: That's all.

A. —but it is open to anybody, and they have—all the students have been fully integrated.

Q. I was talking about faculty? A. I don't think there has.

Q. So nothing has been done to desegregate the faculty in your night schools, and these are special federal programs, are they not? A. Yes; but—

Q. With special— A. —they have been made up largely of the faculty within that school.

Mr. Gray: I have no further questions.

The Court: Anything else from this witness?

Mr. Allen: Your Honor, I have no further ques-

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tions, but I would like to state Mr. Robison has agreed that we will keep the record open to furnishing—so that we can furnish any additional documents which we need to identify the race of the substitute teachers listed on Exhibit 33, which is the principals' weekly reports.

The Court: How long have you gentlemen agreed to keep the record open?

Mr. Robison: If the court please, it was at his request yesterday, rather than make the copies, he served this on us, I believe, around three o'clock, wasn't it, Quaintance? And at that time, he wanted permission—as far as we are concerned, it is all right to make copies of these records; we have no objection to that. We just want our original records back.

Mr. Quaintance: Your honor, if it please the court, we had subpoenaed the application forms for substitute teachers, and Mr. Robison said that was a burden; I said if the court would agree, and if they would agree, we would agree not to require them to

answer that subpoena as far as those applications were concerned, because we might be able to establish race from these—from the substitute teacher lists from the prior years, and that was the extent of our agreement.

Mr. Robison: We will be glad to make them available to him for copying.

The Court: All right; not less than ten days from today.

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Mr. Allen: Yes, your honor.

The Court: If you are going to do it.

Mr. Allen: It will be less than that.

The Court: Anything else from this witness?

Mr. Allen: No.

The Court: All right, Mr. Lassiter; let's take a ten minute recess, please.

(At which time, 11:18 a.m., a recess was had until 11:27 a.m., at which time the hearing continued)

The Court: All right, Mr. Allen; call your next witness, please.

Mr. Allen: Mr. Garrett, W. S. Garrett.

William S. Garrett, witness for the United States, having been duly sworn, testified as follows:

Direct Examination by Mr. Allen:

Q. Would you state your name, please, sir? A. William S. Garrett.

Q. What is your occupation? A. I am associate superintendent of the Montgomery Public Schools.

Q. Would you describe generally your duties as associate superintendent?

The Court: We have already taken all that evidence; I am familiar with that.

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Q. Do you interview or do most of the interviews for teachers, new teachers, who are hired? A. Yes, sir.

Q. Do you ask them whether or not they would be willing to accept assignment to a position where their race is in the minority? A. For the last year and a half or so; yes. Most of them, I wouldn't say one hundred per cent, but the large majority of them, we do; yes.

Q. You don't ask all of them? A. Well, I would—I couldn't say that out of seeing fifteen hundred people, maybe, that I asked every last one of them that, but it is my intention to ask them that during the course of the interview, and we usually try to make notes on the application, their reaction.

Q. I will show you Government—a document marked as Government's Exhibit 2, the application for Edith Spring Marks, it states on there, "Would not accept integrated faculty"? A. Right.

Q. Did you write that on there? A. Yes, sir.

Q. Do you write something similar to that on each application? A. I try to do it; yes.

Q. Now, Government's Exhibit— A. Now, in some cases, where, for instance, we have gone to colleges to contact these people, that would have been—that answer or

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that reaction would have been written on a sheet of paper in a notebook rather than on the application, because we give them the application at that time to send in later.

So I wouldn't say that it is written on every application, but we try to get a reaction from every applicant; yes.

Q. If the applicant says no, they would not accept, what do you do then? A. What do I do?

Q. Right; what do you do with them? A. Well, sometimes I place them, sometimes I don't.

Q. Now, Government's Exhibit 2 through 32 that we have previously identified are teachers which have been hired since— A. Right.

Q. —September 1; and did you interview each one of those teachers? A. Yes.

Q. And of those who said that they would not accept a desegregated assignment, you did not place them in a— in a desegregated situation? A. That is correct.

Q. All right. A. Because these were new people, they applied for a job; they don't have to accept a job. We are in the market competing with other school systems for teachers; if we hired only those that said, "I will accept a desegregated situation," then at this particular moment, we would soon be out of business.

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Q. At the time you hired these thirty-one teachers, you had other applications on file, did you not? A. Right; they were considered among others; yes.

Q. About how many other applications did you have on file? A. Oh, of teachers that are actually available, I couldn't say.

Q. Well, could you give an estimate? A. Well, maybe as many as fifty or seventy-five, but not necessarily in particular subject matter area or specialty that was needed.

Q. All right. A. We might have, say, a surplus of art teachers, three or four or five, six art teachers and no vacancies, and might have one science opening and not have but one teacher that is qualified.

Q. Now, you were present at the taking of Dr. McKee's deposition, were you not? A. Yes, sir.

Q. And at that time, we brought together a group of applications for students—or for teachers who had applied to your system since September 1— A. Right.

Q. —who were not hired— A. (Nodded to indicate affirmative reply)

Q. —and you had—did you compile—count those and compile those? A: There was somebody in the office did it; I don't remember precisely how many there were; I am sure it is in the deposition, probably, but as I pointed out,

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most of those are for teachers who will be available next year, not now, not this year.

Q. And this fifty or so that you just mentioned, that is in addition to those, are people in addition to those who applied for a position next year; is that right? A. Well, if you are talking about total teacher applications, I imagine that we have maybe from fifty to seventy-five who would actually be qualified and be currently available. Now, they might be perfectly available next year, but I can't hire them today if I need them if they are not going to be available until next year; many of these people are teaching in other school systems.

Q. But you had those available at the time you hired these thirty-one teachers? A. Well, I had them—the applications; they were not necessarily all available is what I am trying to get over to you. Most of them were not available, of the ones you looked at, as I pointed out, most of them were not finishing college until May of '68, and consequently would not be available to teach until next fall.

Q. Did you interview Mrs. Louise E. Jackson? A. Yes, sir.

Q. I will hand you document marked as Government's Exhibit 29; did you write this on it? A. I certainly did, and that is one of the reasons I selected her; I think she will make an excellent prospect next year to desegregate

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a school with, and that is what I have in mind—

Q. She— A. —to transfer her to a white school, previously white school.

Q. She is a Negro teacher— A. Yes, sir.

Q. —and she, this year, was assigned to Booker Washington? A. Right.

Q. Which is an all Negro school? A. Right; and as Mr. McKee has already testified, we were not attempting, this school year, to get into the area of assigning colored elementary teachers into previously white elementary schools, because we wanted to do it all in one fell swoop next fall.

The Court: You categorize elementary school one to nine or one through nine?

Witness: One to six.

The Court: One through six?

Witness: Yes, sir.

The Court: And then the junior high—

Witness: Is seven to nine, and senior high, ten to twelve.

The Court: All right.

Q. I will now show you document previously identified as Government's Exhibit 36, substitute teacher list. A. Yes, sir; now, this is this year's substitute teacher list

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which, Judge, is alphabetized without regard to race. I could not, for the life of me, determine who is white and

who is colored. We interview these people; if they appear to—that they are available and would make good substitute teachers, I send them in to my secretary, she has the health certificates and the other red tape connected with employment done, and they are placed on a master list and sent out to the principal. From time to time, additional lists are sent out in the same category alphabetized without regard to race.

Q. I will direct your attention to this notation by the name of Nina Rust Fraser, it says, "Lanier and Lee"; what does that mean? A. Now, we—you will run across that in many cases. We have some teachers, substitute teachers, who, because of transportation, lack of transportation rather, family circumstances, sometimes small children, that will limit themselves to two or three surrounding schools, that is their only interest, that is the only place that they would be willing to teach. Therefore, we put that on there. Here is one up here that says, "Retarded Children School"; this lady is interested in substituting and will not substitute anywhere except for the retarded school.

Q. That requires some kind of special training, doesn't it? A. She has had the—Mrs. Camp is—has a—I believe a retarded child or related closely to a retarded—

Q. How about this one that says, "Flowers only"; does that mean she will only accept— A. That is the only ele-

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mentary school she will go to, is Flowers only. Of course, that limits the number of times she will be used. She might not be used hardly any because of that, but she may not have a car at all, but she could help at that one school and can't help at any others; that is really not any regard to race.

Q. Do you see any reason why a teacher should be allowed to limit herself to, say, Lee and Lanier and not teach

at Carver? A. Yes, sir. Just like following your reason, I could see a lot of good reasons why this person ought to be allowed to limit herself to the retarded school only. Now, understand this; these are people who more or less volunteer to come in and serve as substitutes. We need them. And we take them for whatever number of schools they can teach or for whatever number of days they can help us with; they don't have to help us at all.

Q. Have you given the principals any instructions as to calling teachers on a desegregated or nonracial basis? A. We handed them this list in an integrated meeting when all the principals and supervisors were available. If we didn't actually give them the list at that time, we called it to their attention that it was coming out, and we told them that they were free to use anybody on that list that they could get to come on a given day. Now, a lot of times, a principal will call three or four different teachers on that list before they will get one whose family situation or whose bridge

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game schedule or whose beauty parlor schedule or club meeting schedule will permit them to work that day.

Q. Is that all the instructions you gave them, that they were free to use whoever they wanted to use? A. Right. There it is with as much qualification as we know how to put on a small sheet like that, and they were told to use any and everybody on there that they cared to use or that they could get. Many times not a question of what they care to use, but a question of who they can get that is available.

Q. What efforts did you make to insure that the principals were not discriminating in who they called? A. I cannot—and I just say this now—monitor fifty something schools and fifty something principals to see who they are

calling for substitute work. These emergencies come up oftentimes at seven forty-five to eight o'clock in the morning; the teacher gets up in the morning, she thinks, "Well, I will go to school today." She gets dressed, and maybe she's got intestinal flu or something; at the very last minute they will call. The principals struggle to get anybody there on time, and I cannot and don't attempt to try to monitor this thing. Now, I have—just in routine visits around the schools, I have observed some teachers of the opposite race teaching or doing substitute teacher work, so there has been some of it going on.

Q. Do you have access to the principals' weekly report that gives the name of the substitute teachers for that week

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on it? A. I could get them; yes.

Q. Do you ever make spot checks to see if there is any pattern on that particular person? A. No, I have not; I have many other duties other than this, and I have a small amount of help, just one secretary. Public school funds are limited, and we just do the best we can do, and I have made no attempt to try to monitor or enforce or to try to do this substitute calling, myself. It can't be done; too big a scale.

Q. Prior to the 1967-68 school year, what was your procedure with regard to placing of student teachers? A. I don't have anything to do with that.

Q. You don't have anything to do with it? A. No, sir.

Q. Beginning the fall of 1967, you didn't help in placing student teachers? A. No, sir.

Q. How many teachers ultimately do you estimate will be assigned to the Jeff Davis School for 1967-68 school year? A. For this coming year?

Q. Yes, sir. A. Well, that is anybody's guess. Depending on who chooses—how many chooses—whether or not—

but I would say that I would certainly hope that not more than eight hundred choose; that would be an optimum number to open up school with. And consequently, you can

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divide twenty-five into that; that is the present pupil-teacher ratio for senior high school pupils; that would give you the number of teachers. What—that would be forty, wouldn't it, if there were that many pupils? Now, this is rough; you have got to give or take a few teachers.

Q. How many teachers do you estimate you will have in minority situations this coming year? A. For the school system?

Q. Right; regular classroom teachers? A. Well, we have about thirty-five now. We are going to attempt—our plan is to try to get at least one into every junior high and every elementary, and then start—once we accomplish that, start around with the second one and the third one and so on, rather than to have three in one school and none in another.

Q. Well, based on your— A. Roughly speaking, a minimum of—with thirty-five already there, we have fifty schools or thereabouts; I would say about a hundred or better.

Q. Based on your— A. I think that is practical; I believe we can accomplish that.

Q. Based on your prior experience in hiring new teachers and placing new teachers, how many teachers do you estimate that you will hire who will be new to the system this fall? A. Well, now, of course, that varies from year to year. It will depend on the number of resignations, num-

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ber of deaths, the number of retirements.

Q. Well, how many did you hire last year, approximately? A. I would assume maybe a hundred.

Q. You will hire about a hundred new teachers this fall? A. Now, that—I don't—by new, you mean replacements, I assume—

Q. Yes, sir? A. —new to us, but not added positions, but replacements?

Q. Yes, sir; right? A. I would say between now and next fall, perhaps a hundred.

The Court: And does that include the—the new teachers, too, or just replacements?

Witness: No, sir; I think that would be everybody, Judge.

The Court: All right.

Witness: We are not growing in pupil-teacher—in overall numbers of pupils in our school system as we once were; a few years back, it took fifty additional teachers in addition to replacements for us to stay staffed, but that situation has stopped; we have leveled off, so it will be mostly replacements.

Q. As part of your duties, have you been given the responsibility, primarily, of carrying out faculty desegregation? A. Well, the superintendent has delegated the recommending of the best faculty members that I can come by, and desegregation is a large—our faculty is a large part of my responsibilities; not the only one, but that has

been discussed and—with the Board and with the superintendent, and we have a plan to accomplish this, have been working on it all the year.

Q. Well, under your plan, when do you estimate that faculty desegregation will be finally accomplished in terms of the objective of the court order removing— A. Well,

now, that is something I don't know, because I don't know what the objectives of the court order are. That has never been laid down in any percentage fashion that I know of. It says that you will have reasonable desegregation of faculty and that you will strive toward having each faculty not recognizable as being staffed for a particular race. That is what I get out of it.

Q. Well, let— A. So I—I can't—this court order is in fairly general terms; I can't answer that question.

Q. Well, you made the statement about having schools staffed so that they will not be recognizable as for a particular race; when do you expect that that will be accomplished? A. Well, that would depend on what the Board's definition of that is, of the court's definition of that.

Q. Do you have a definition of that? A. Not at this point; we have discussed that many times, and I do not have a definition of—of what that would mean.

Q. No one has told you, given you a definition in terms of mechanics, in terms of numbers, none of your superiors?

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A. No; as far as I know, no other school personnel man in America has. I have talked to many of them. What we are striving to do is to make progress and keep going and hope that somewhere along the line we will have achieved the—what the court has in mind. But if you will look at that court order, you will see it doesn't lay down the precise terms exactly what that means; it is a broad definition.

Mr. Allen: I have no further questions, your honor of this witness.

Mr. Gray: Mr. Garrett—

The Court: The court order requires at least one teacher or not less than two teachers in every school in your system—

Witness: (Nodded to indicate affirmative reply.)

The Court: —of a race opposite that of the majority of the students, doesn't it?

Witness: Yes, sir.

The Court: That is pretty precise, isn't it?

Witness: Oh, yes, sir; but he was asking me about the ultimate, I thought.

The Court: All right; let's go ahead.

By Mr. Gray:

Q. Your honor—I mean Mr. Garrett, with respect to—you have heard testimony here this morning from Mr. McKee to the effect that there has been no attempt to have Negro teachers on the elementary school level in formerly

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white schools? A. Yes; yes.

Q. Now, was—is there and did you follow this rule, too, with respect to substitute teachers? A. No; we just published a list on substitute teachers and sent them out to all principals.

Q. No communication was— A. They were told they were free to use anybody on this list.

The Court: I don't believe that is sufficient at that point; I believe you had a duty and obligation, Mr. McKee and Mr. Garrett, to tell those principals that they are not to hire substitute teachers on the basis of race and not—and if you tell them they are free to hire anybody they want to, that is not sufficient; it is just not adequate at all; they are to select them without regard to race or color, and you are under a duty to tell them that, and you are under a duty to see they do it. So just to tell them they can hire any-

body they want to is not sufficient at all; that is not compliance with the order. Let's go ahead; that is just a minor point in this thing, but it's—it is something that the order requires you to do, and it is evident that you are not doing it.

Witness: May I—

The Court: Sure.

Witness: —make a comment? I don't know the race of these people on this list, and I don't hardly see how a principal could. That was why I told them that. I mean, I thought we had a list that was fairly foolproof as to determining who was who.

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The Court: Well, I haven't examined your list, but I just heard you identify it. You give their addresses, don't you?

Witness: Yes, sir; but—

The Court: And you give other identifying data on that list, don't you?

Witness: Like what?

The Court: Well, I don't know; I haven't seen it yet, but I just heard you identify it.

Witness: All in the world it has is a name and address and the number of years that they attended college, so they would know whether they were a college graduate or so on, and then the subject matter, area in which we think they are the most proficient.

The Court: Well, I take it all of your principals have, through the years, had experience in hiring substitute teachers?

Witness: Calling them.

The Court: Sure.

Witness: We do the hiring.

The Court: And they know, when they are called, if they have had experience in hiring them before, why they are calling, don't they?

Witness: Well, now, the list changes from year to year.

The Court: I know, but if you have Jane Doe and

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Sarah Roe on there, and they have been substituting for several years, they know when they call Jane and Sarah who they are?

Witness: Oh, yeah.

The Court: Well then, you can't tell them they can call anybody they want to; you have to tell them they must call without regard to racial considerations; that is the point I am making.

Witness: Sure.

The Court: It just violates the court order. Let's go ahead. That is a minor point in this entire picture, but—

Mr. Gray: Yes, sir.

Q. One other minor area. A. All right.

Q. Mr. Garrett, I think you indicated that you do make notations on the application as to whether or not they will accept integrated situations; if they will, you assign them there. Now, I call your attention to the bottom— A. No, sir.

Q. —to the bottom of the first page of your— A. I didn't say that; I didn't testify to that.

Q. Oh, I— A. I said I made a notation as to whether they would or would not at this moment accept a desegregated situation.

Q. All right.

The Court: Said he did that on most of them.

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Witness: That's right.

Q. Then— A. But I don't necessarily hire them for that, because I may not have an opening at that point.

Q. I understand. There is a provision on your application which says at the bottom of the page, "Pursuant to federal court orders, you are hereby notified that the Montgomery County School—Schools operate on a racially desegregated basis, and the members of its staff are subject to assignment in the best interests of the school system without regard to race or color of a particular employee"; in view of this statement on your application, what then is the purpose for you going into this question of race with them? A. For the simple fact that we, of course, have been trying to actually promote with each person that we interview the idea of accepting an assignment in a minority situation.

Q. So it really serves no useful purpose, if you don't abide by it? A. Yes, sir; it serves a very useful purpose, because it helps us in planning. I have had some applicants —well, some that I interviewed last week—that said, "Well, I would have no religious or moral or any other reasons for not accepting an assignment in a previously colored school, but I would prefer not to do it my first year"—

Q. Does— A. —"that I have got so many adjustments

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to make." All right; I try to make a note of that, because I assume we are going to be in this for a good while. I make a note of that so that I will have that person tagged maybe for year after next. This is a continuous thing.

Q. Does that provision on the application mean what it says? A. Down at the bottom?

Q. Yes, sir? A. We have legal authority—that has been testified to before; I would assume that we have legal authority to just up and transfer a teacher regardless of her wishes.

Q. I was talking about new employee, a new teacher, that is what we are talking about on the application? A. Well, now, a new teacher has to accept whatever you are going to offer her.

Q. That's right. A. Right.

Q. And if she accepts what you offer when you have that statement on it; then it means by filing the application she or he is available to go anywhere you send them? A. No, sir.

The Court: You are getting off into an area of argument.

Mr. Gray: No, sir; I am through, your honor.

Witness: No, sir; that is not what it means.

The Court: All right, Mr. Robison.

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Cross Examination by Mr. Robison:

Q. Mr. Garrett, did you notify the principals of all the schools that race was not to be a factor in selecting substitute teachers? A. Yes, sir; I am positive we made that statement—

Q. Did you— A. —but—

Q. —at teachers' meetings and other meetings— A. Other times.

Q. —notify the faculty or the principals that race was not to be a factor in the selection of substitute teachers;

the principals, were they notified of that? A. As they call—

Q. As they call them? A. Yes; and not only that, we have discussed and furnished them with a copy of the court order.

Q. You have given to each principal a copy of the court order and then have instructed them that in the selection of substitute teachers, race was not to be a factor? A. Yes, sir.

Q. As a matter of fact, from your observations in visiting certain schools in this system, have you seen substitute teachers of a minority race teaching in schools where the pupils were of a majority, opposite race? A. Yes, sir.

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Q. In the preparation of your last substitute list, Mr. Garrett, did you purposely leave off the school of graduation of these substitute teachers so that that would not be a means of identifying them as one race or another? A. Yes, sir; we did that.

Q. In the present substitute list that you are using this year, is the only information on there the name, address, telephone number, the graduate—the educational qualifications, and any preference that they might have as far as schools are concerned? A. Subject matter area at their grade levels that we think they are proficient in and a few limitations that they, themselves, can't help, but in certain number of schools because of family situation, transportation, and so on.

Q. In the addresses that are located—show the location of some of these teachers, is it impossible to determine from the address the race of the substitute teacher? A. Well, definitely, there are many streets in Montgomery that one part of it there are white residents, and a few blocks

later, there are colored residents. There are many of them that are across the street from each other. I, myself —and I have been in this business a long time—could not—and I would—am under oath—I could not go down that list and pick out a white and colored teacher to save my life.

Q. That is all of them; is that correct? A. I could pick

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out some, I think; yes, sir; but I certainly couldn't pick them all out.

Q. All right. Now, in the substitute list as it is compiled, are there carry-overs from year to year on the substitute teachers' list, or are new names added from time to time? A. About the middle of July, we call everybody that is on the present list and ask them if they would like to serve again. Some say no; some say yes. Those that say no are stricken off; those that say yes, we fill out the additional information, health certificate, and all that, and we alphabetize that list along with the new ones that are interested and put out another list for the following year.

Q. Mr. Garrett, it has been—or you have been shown an application of a teacher that is presently employed where they say they will not accept assignment in a school of the opposite race; at the present time, do you have, to your knowledge, several teachers in this system that have said they would not at this time accept employment in a school where the children are of a race predominantly opposite from theirs, who have stated that after their first year or two years teaching in this system, would be willing to transfer? A. Yes, sir.

Q. Do you have, in the course of your planning for further faculty desegregation in Montgomery, have those students—or those teachers with that information available to you for transfers at a later date? A. Yes, sir.

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Q. Is it your plan and the plan of the Board of Education that every school in this system in the city at this time would have a desegregated faculty of one or more teachers commencing in the September term? A. Yes, sir.

Q. Is it also in your planning that the number of teachers in the high schools—that the desegregation in the number of the teachers in the high school will be increased beginning in the fall term next year? A. Yes, sir.

Q. How do you plan, Mr. Garrett, and in your planning with Mr. McKee and the Board, to increase the number of teachers teaching in schools where the children are predominantly of the opposite race? A. Well, we have—we think, have done a good bit of groundwork, background work, this year by bringing teachers of the opposite race together, sometimes in a previously colored school, sometimes in a previously white school, in the observation lessons and in discussion. We plan and are hopeful that we will have a number of summer institutes this summer where teachers of all the races will be together working in this institute for the improvement of certain areas of instruction, both technique and content of the curriculum. Now,

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that is background-creating climate that we think will be very helpful. During the course of all of my interviews with college graduates, fresh college graduates—and we go to Alabama State and Alabama College and Troy and Huntingdon and so on and have a—spend the day and interview prospective teachers—in the course of that, we discuss very frankly with every one of them the fact that we are attempting to desegregate faculty in the Montgomery public school system, and we encourage them to agree to accept an assignment where a majority of the

children are—teachers are of another race, and what I have observed has been very encouraging to me. I have been to two colleges thus far, and, while the number that agreed that they would like to have—like to try that has not been as many as I wish it were, it has been rather encouraging.

The Court: What you are saying is that you don't find the extent of prejudice in the younger new graduates—

Witness: Yes, sir.

The Court: —that you do in the old ones?

Witness: Right.

The Court: All right; I understand.

Witness: While we are talking informally—

Mr. Robison: This is not very informal, Mr. Garrett.

Witness: Well, if I might say to the Judge, oftentimes a little bit of maturity, though, makes them much more adaptable in actually accomplishing it and carrying it out in a successful manner; I don't

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mean too much maturity, but a reasonable amount of experience, teaching experience, is real helpful in carrying out an assignment in a minority school.

Q. At the present time, is—at the moment, is this a crucial time with respect to the employment of faculty for this system— A. Yes, sir.

Q. —into next year? A. Yes.

The Court: My understanding, now, you are going to have this next year teachers of the minority race in every school in your system?

Witness: As far as humanly possible.

The Court: And how many do you expect to have in your—in your elementary schools, a minimum per school?

Witness: Two, at least.

The Court: And how many in your junior high, your minimum?

Witness: Two; maybe more.

The Court: All right.

Witness: Depending on what we come—

The Court: Now, let's go to percentages; what percentage do you expect to have in your high schools?

Witness: I just don't know. We haven't actually discussed that up to this point. I—I couldn't say.

The Court: Well, your race—your student popu-

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lation is sixty-forty?

Witness: Yes, sir.

The Court: Ultimately, that will be your optimum if you are going to eliminate the racial characteristics of your school through faculty—

Witness: (Nodded to indicate affirmative reply)

The Court: —wouldn't it? It would have to be.

Q. At—

Mr. Robison: Excuse me, your honor.

The Court: (Nodded to indicate affirmative reply)

Q. At the present time, the faculty—ratio of students in this system is approximately sixty-forty at the present time, is it not? A. Yes, sir; it is awful close to it.

Q. Do you understand, Mr. Garrett, that you are under the affirmative duty to desegregate the faculty of this school system under this court order, that you have an affirmative duty to desegregate faculty in the Montgomery County school system? A. Yes, sir; along with whatever authority I have delegated in these matters by the Board of Education and the superintendent.

Q. Do you state to the court that, within the authority which you have as associate superintendent of education, that you will discharge that affirmative duty that is on you to desegregate the staff of this system in line with the preparation that you have already made? A. Yes, sir;

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we have been working diligently toward it.

Mr. Robison: I believe that's all.

Redirect Examination by Mr. Allen

Q. Mr. Garrett, I believe you testified when I was examining you that you were going to have at least—at least one in each school, or am I wrong on that? A. I said we would try to start with one in every elementary school and then come back around with two, and if we were successful, maybe three; I don't have any preconceived notion about maximums, but I would rather have these distributed rather than to have three, say, in one school and none in another.

The Court: I understand that.

A. That is what we are after, I mean—

Q. Now, as to these substitute teachers you said you have seen, how many have you seen? A. Well, now, I don't

visit in the schools as much as some of our people; I don't —I don't—frankly don't have the time. I used to be able to visit more than I have this year. But I have seen several, I would say four or five, and I have heard reports, though, from other school personnel that have seen others that I didn't see, so I would assume there has been some going on.

Q. Do you have any way of knowing— A. I don't know how many; I wouldn't—I don't have any way in the world to know.

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Q. Do you have any way of knowing whether these reports that you have heard are the same teachers that you saw, yourself? A. I don't think so, because in some cases, it would be in a different school and on a different day from when I saw them, but I would assume it was a different case.

Q. Four or five is what you have seen? A. Yes; but I haven't visited the schools this year; I want to hasten to point that out.

Mr. Allen: That's all, your honor.
The Court: Mr. Gray?

By Mr. Gray:

Q. I think you said, Mr. Garrett, that at present, your teacher ratio is sixty-forty; you mean sixty per cent white and forty per cent Negro; right? A. (Nodded to indicate affirmative reply)

Q. Now, is it the intention of the Board to have this type of ratio in each school? A. I just do not know. We have not discussed things that far; we are trying to meet immediate goals.

The Court: Anything else from this witness?
Mr. Allen: I have nothing further, your honor.
The Court: Mr. Robison?

Recross Examination by Mr. Robison:

Q. Mr. McKee, in the selection of substitute teachers or

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in the employment of teachers, is the particular qualification of that teacher insofar as her ability or her ability to teach Spanish or a particular subject—

The Court: I will take judicial notice of that.
Mr. Robison: All right.
The Court: Anything else?
Mr. Robison: That's all.
The Court: Do you have anything else from this witness?
Mr. Allen: No, your honor.
The Court: All right. Let's recess until one thirty, Mr. Lassiter.

(At which time, 12:06 p.m., a recess was had until 1:30 p.m., at which time the hearing continued)

The Court: Your next witness, Mr. Allen.
Mr. Allen: Call Mr. Jack Rutland.
Witness Jack Rutland: Yes, sir.

JACK RUTLAND, witness for the United States, having been duly sworn, testified as follows:

Direct Examination by Mr. Allen:

Q. Would you state your name, please, sir? A. Jack Rutland.

Q. What is your occupation? A. I am a junior high

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school principal.

Q. Have you accepted an assignment as principal to the Jeff Davis High School which will be opened next fall? A. Yes; I have.

Q. When did you first—when did you accept that assignment? A. About August, was a year ago.

Q. Were you approached by personnel from the Montgomery County Board of Education to accept this position? A. Yes; I was.

Q. You didn't ask them for the position; they came and asked you; is that correct? A. That is correct, sir.

Q. Have you been consulted about the assignment of additional personnel at Jeff Davis High School this fall? A. We have talked generally.

Q. Well, thus—so far, you have assigned a principal's assistant; isn't that correct? A. Sir, assignments are made through our Board of Education, superintendent; I do not have jurisdiction there.

Q. Did anyone from the Board of Education talk to you about the assignment of a principal's assistant, a coach, two assistant coaches, and a band director? A. Yes, sir; we talked.

Q. Did you make recommendations? A. Yes; I did.

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Q. Were the people who you recommended appointed? A. I believe most of them were or I agreed to it.

Q. Did you discuss other people as possible—possibly filling these positions? A. Yes, sir; we did.

Q. Were they all white? A. I believe, thus far; yes, sir.

Q. Have you made any efforts to compile a list of teachers to recommend for appointment or assignment to Jeff Davis High School next fall? A. Yes, sir; I have in a general way; I have thought about good teachers from all over the system from every area.

Mr. Allen: I would like the Clerk to mark this as Government's Exhibit next in line.

The Clerk: Government Exhibit number 38 for identification.

Q. I will show you a document which has been marked as Government's Exhibit 38, and ask you if you would identify that, please, sir? A. Those are my notes concerning teacher prospects, some of whom I would like to get if I can talk my associate superintendent into it. As I stated, that is not my responsibility, but I do try to get the best.

The Court: Your associate superintendent—

Witness: Mr. Silas Garrett, Judge.

The Court: —who is that? Did I understand you

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to say they had an associate principal?

Mr. Allen: Well, I understood that they have—there will be a principal's assistant or someone or an administrative assistant who will also teach this —coming from your school; isn't that correct?

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CARD 14

Witness: That is correct; we call them principal's helper, and he will teach and help in the office some.

The Court: Has that position been filled?

Witness: Yes, sir.

The Court: Three assistant coaches been filled? —

Witness: Two assistant coaches, sir.

The Court: (Nodded to indicate affirmative reply)

Q. And one head coach— A. That is correct.

Q. —is that correct?

Mr. Allen: I would like to offer this document into evidence as Government's Exhibit—

Mr. Robison: We have no objection,

The Court: It will be admitted.

Mr. Allen: —38.

Q. Approximately how many—

The Court: Let me see it.

Q. —Negro teachers have you actually talked to about— A. I have talked to no teachers, Negro or white.

Q. Is it part of your responsibility as the new principal

of Jeff Davis High School to organize the extracurricular program for the school? A. Yes, sir; that is true.

Q. And what have you done to—thus far, to organize this program? A. I have accepted the aid of about five businessmen who have come to me from time to time since I have been nominated and who have told me that they would like to help me get started; they understand this is the system in Montgomery County. The School Board, of course, provides the instructional material and equips

the building, but extracurricular activities or programs are handled by subscription from the public.

Q. Is Mr. Tranum Fitzpatrick the chairman of this—of this group? A. Yes; he is.

Q. Did he organize and conduct a meeting at—in the last week— A. Yes, sir.

Q. —in order— A. Yes, sir.

Q. Where was that meeting held? A. The Governor's House Motel.

Q. About how many people were there? A. About seventy-five.

Q. Were any Negroes there? A. No, sir.

Q. Are there any Negroes in your group of businessmen who are helping to organize the extracurricular program?

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A. No, sir; we didn't have any to volunteer, but we were looking for help from all quarters.

Q. What have you done to find Negroes? Negroes— A. I have done nothing to find Negro or white; they have come to me.

Q. How far have you gone in toward raising money for extracurricular activities? A. You mean how much money, sir?

Q. Well, how much equipment have you bought? A. I do—I cannot answer that; we have ordered some equipment for spring training; my coach has ordered some equipment; I do not have a tally on that.

Q. Have you already purchased the football equipment? A. Some of it.

Q. You have already selected the football uniforms? A. That is correct, sir.

Q. Have you already selected the band uniforms? A. Yes, sir.

Q. Who did the selection? A. The coach helped me with the football, and the band, I did mostly on my own; of course, I had some—some advice from several people. I had this uniform on a mannequin in my home, and several people saw it and liked it and accepted it.

Q. All right; did any Negroes see it and accept it and like it? A. They have had an opportunity to see it in yesterday's paper and also on television several times; I am sure they did.

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Mr. Allen: I would like to mark this as Government's Exhibit 39.

The Clerk: Government's Exhibit 39.

Q: I will show you document which has been marked as Government's Exhibit 39, and ask you if you would identify that, please, sir? A. In what manner, sir?

Q. You just mentioned a picture in the newspaper; is this the picture that appeared in the newspaper? A. Yes, sir.

Q. How did that picture happen—strike that. Is that you in the picture in the center? A. Yes, sir; that is correct.

Q. How did this picture happen to be made and placed in —in the newspaper? A. On one day this week, Mr. Sam Adams, who is a news writer for the Advertiser-Journal, a local newspaper, called me at my school, Goodwyn Junior High School, and asked me if I would have such a picture made.

Q. Where did you get the students who are modeling these uniforms? A. I called a colleague who is a junior high school principal; I did this because I did not want

to in any way influence—abiding by the court order, I didn't want to influence a child in any way to choose my school, so I did not—have not ever seen those two boys before that day.

Q. Well, the principal you called was the principal of

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Cloverdale Junior High School— A. That is correct, sir.

Q. —which is a predominantly white school? A. I believe that is true, sir.

Mr. Allen: I would like to offer this into evidence as Government's Exhibit.

Mr. Robison: I have no objection.

The Court: It will be admitted. Why didn't you get one Negro and one white student for that?

Witness: Judge, I didn't select them, myself, so I don't—

The Court: Well, you used them—

Witness: Yes, sir.

The Court: —and you got the man that did select them?

Witness: Yes, sir.

The Court: Why didn't you get one of each if you didn't intend to create the impression it was going to be a white school? Let's just get right down to the nub of the thing; why didn't you get one of each if you didn't intend to create the impression it was going to be a white—

Witness: I didn't do it to create an impression at all.

The Court: Of course, that has that effect, doesn't it?

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Witness: That is one interpretation, sir; it is.

The Court: Sure. Sure it is, where you are going through a period of trying to desegregate a previously dual school system, where you establish a new school in the system—

Witness: Yes, sir.

The Court: —immediately before your freedom of choice period—

Witness: Yes, sir.

The Court: —that is an obvious effect, isn't it?

Witness: That is the Judge's interpretation, sir.

The Court: What is yours?

Witness: My interpretation is I am trying to abide by the court order; I would assume that because the school, located geographically where it is, probably predominantly of the white race.

The Court: You understand we don't have geographical school districts here—

Witness: No, sir, not—

The Court: —yet. Yet. I call your attention to this copy of Franklin County Board of Education in North Carolina case where Judge Butler wrote this opinion—I think it is excellent law—where he ruled with the Board of Education for two or three years on freedom of choice and kept having things like this, and they never did do anything; he just put them strictly on the geographical basis on the theory that freedom of choice didn't work. And it looks like that is where we are headed here in Mont-

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gomery if we don't stop stuff like this. Go ahead.

Q. Referring to the picture that was just identified, it states in the cutline under the picture that the students from Cloverdale Elementary will be eligible for—to attend the Jeff Davis High School; where did the reporter get that information? A. I don't know, sir.

Q. Did you tell him— A. Of course, if I may add, sir, that all junior high school students in Montgomery will be eligible under the freedom of choice.

Q. Did you tell the reporter that, that all— A. No, sir; I didn't tell him that.

Q. There have been other—there has been other publicity surrounding the opening of the Jeff Davis High School; isn't that correct? A. Yes, sir.

Q. Have you talked with the newspaper reporters on other occasions about Jeff Davis High School? A. Yes, sir; I have. I gave an interview, and you have that information, I believe with Mr. Massey and my material.

Mr. Allen: I would like to mark this as Government's Exhibit.

The Clerk: Government's Exhibit number 40 for identification.

Q. I will show you the newspaper clipping marked as Government's Exhibit 40, and ask you if that is the clipping

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which you were just referring to? A. No, it is not; the clipping I am referring to has a picture of the school under construction; it has a by-line of Massey, I believe, sir.

Q. Well, is—was this newspaper—particular newspaper clipping—strike that. Was this story made up as a result of an interview with you? A. I don't believe so. I

believe that is—as it says here that I was making a speech before a civic club, and I think he picked it up from there, sir.

Q. When was this speech that you gave to the Montgomery Rotary Club? A. Sir, I don't recall that.

Q. Approximately? A. Three weeks ago.

Q. Was Billy Livings, the assistant coach, present there? A. Yes; I believe he was.

Q. Did he also speak? A. I believe we had a question and answer period, and I believe he answered the questions.

Q. Did either you or Mr. Livings say that most of the football players from Lee and Lanier High may join the Davis team if they reside near the new school? A. I don't believe we did, sir. If we were—we were probably misquoted; I can't tell until the freedom of choice who will come from where.

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Mr. Allen: I would like to offer this as Government's Exhibit 40.

Mr. Robison: If the Court please, we would object to the introduction of that; it has not been properly identified nor is it shown that it reflects his comments.

The Court: I sustain it; I sustain objection.

Q. Is part of your duties as new principal making up the athletic schedules for the coming year? A. Yes, sir.

Q. Have you made up the athletic schedules for—say the football schedule? A. I have for football.

Q. Have you worked on the basketball schedule? A. No; I have not.

Q. Is anyone else working on the basketball schedule? A. Yes, sir; assistant coach Charles Lee is doing that.

Q. Did you make most of the contacts to make up the football schedule for this fall? A. Yes; I did.

Q. You scheduled ten games; is that correct? A. That is correct.

Q. And these are all with traditionally white schools? A. All of them, I assume, would be integrated schools under the court order.

Mr. Allen: I would like to mark this.

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The Clerk: Government's Exhibit number 41.

Q. I will show you the document marked as Government's Exhibit 41, and ask you if you will identify that? A. That —that is correct; that is our football schedule.

Q. Is Montgomery County High traditionally a white school? A. Yes, sir; I believe it is predominantly white.

Q. Are any of these other teams, any of these schools on here, not traditionally white? A. I would not think so; I do not know what their enrollment would be; I would think that they would be predominantly white.

Q. Well, I didn't say predominantly; I said traditionally white schools? A. I do not know the answer to that.

Mr. Allen: Well, I would like to offer this as Government's Exhibit 40.

Mr. Robison: We have no objection.

The Court: It will be admitted.

Q. Did you contact the administrators of schools in addition to those and attempt to set up your football schedule?

A. Yes, sir; I contacted several administrators, and some I was able to schedule and some not.

Mr. Allen: I would like to mark this as Government's Exhibit.

The Clerk: Government's Exhibit number 42.

Mr. Allen: 42.

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The Court: Has your school joined the Alabama Athletic Association?

Witness: No, sir; not yet.

The Court: Have you made arrangements to do so?

Witness: We have not formally applied, but we have—

The Court: How do you know what teams to schedule if you haven't made arrangements to do so?

Witness: I selected schools from the list of the Alabama High School Athletic Association.

The Court: All right; that is what I want to know.

Q. I would like you to look at the document marked as Government's Exhibit 42, and tell us what that is? A. I have never seen it before in my life, sir.

Mr. Phelps: That is your basketball coach.

Witness: That is my basketball coach's information.

Mr. Allen: I beg the court's pardon.

Witness: He put his in my file as we were going out to lunch, and, of course, it is all together.

Mr. Allen: I will identify this with the next witness, your honor.

The Court: All right; let's get along.

Mr. Allen: I would like to mark this.

The Clerk: Government's Exhibit number 43.

Mr. Allen: I believe you better make them A, B, and C; there are three papers there.

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The Clerk: Government's Exhibits 43-A, B, and C.

Q. I will show you Government's Exhibit 43-C, and ask you what that is? A. This is stationery that is drawn up by the steering committee listed here; these are the people who are raising extracurricular funds for Jefferson Davis High School.

Q. These are the people listed along the letterhead here? A. Yes, sir.

Q. I believe you already said that those are all white? A. Yes, sir; that is correct.

Q. Or did you—okay. And I would like to show you Government's Exhibit 43-B, and ask you if you can identify that? A. That is a brochure drawn up by this committee to present to donators, which includes the proposed budget, of course.

Q. What is this on the front, this first page? A. This is a proposed crest drawn up by a ring company; that would go on the rings or stationery or what-not; it is a symbol we use. We do not have a mascot yet; the children are going to select that. We needed something to be flashing; that is what that is.

Q. Who designed this? A. This particular drawing here?

Q. Yes, sir? A. I imagine an artist from Josten Ring Company.

Q. Well, I show you Government's Exhibit 43-A, and ask you if you identify that? A. That is a letter to me

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from Mr. Milo B. Howard, Jr., who is director of the Department of Archives and History, in which I, I believe by telephone conversation, asked him if he had materials on Jefferson Davis. I became interested in Jefferson Davis when I was named principal of Jefferson Davis High School and began reading about Jefferson Davis, and that is what that is.

Q. Did he send you information that could be used in making up this design? A. Yes; I believe the Confederate Seal was also included in that letter described which has a picture of George Washington on a horse on it, by the way.

Mr. Allen: I would like to offer these as Government's Exhibits 43-A, B, and C.

The Court: It will be admitted.

Q. Is transportation provided to the Goodwyn School? A. Yes, sir; from certain areas.

Q. From what areas? A. These areas are designated in the court order; I believe you would describe it as Chisholm area, Boylston area, North Montgomery, Atlanta Highway, Bell Road, North Montgomery.

Q. Is there any reason that you can see, based on your experience in supervising transportation at Goodwyn, why transportation should not be provided to the Jeff Davis School? A. I don't think that that would be a decision made at my echelon of experience.

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Q. Well, the question is, is there any reason— A. Sir, I don't believe I could intelligently answer that; I don't know all the implications.

Q. Well, as principal of Goodwyn, you are in charge of transportation there? A. Yes, sir.

Q. Do you anticipate any problems at Jeff Davis that would be different from the problems that you would have in transportation at Goodwyn? A. Oh, no; those of us who have been in transportation know that you have problems always with transportation, but they are all of the normal nature.

Q. Are they going to be different at Jeff Davis? A. Sir, I couldn't answer that, not having any experience in that area.

The Court: Wasting a lot of time, Mr. Allen; let's get along.

Q. Do you anticipate hiring another secretary at your— at Jeff Davis next fall? A. This would depend on enrollment.

Q. Have you already made contacts with prospective secretaries? In— A. I have talked to one secretary, the one I have had for seven years.

Q. How about others to fill an additional secretary job?

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A. No, sir; I haven't. I haven't made any contacts; I have several letters of application, and I only talked to those people and answered questions who asked me questions.

Q. Do you know whether those people that you have had contact with are all white? A. No, sir; I do not know; some of them have written me, and I do not know.

Mr. Allen: I have no further questions, your honor.

The Court: All right; Mr. Gray, Mr. Seay?

By Mr. Gray:

Q. Mr. Rutland, in—just so I am sure I understand, in preparation of your athletic schedules— A. Yes, sir.

Q. —all of them— A. (Nodded to indicate affirmative reply)

Q. —both football and basketball— A. (Nodded to indicate affirmative reply)

Q. —you made most of the contacts; is that correct? A. In future years, I assume that the coach will make the contact, Mr. Gray. This year, since I had no one but myself, I did it.

Q. Now, did all the people you contacted—were they white or colored? A. The people I contacted were white people.

Q. All right. Now, with respect to approximately how many clubs or social groups, et cetera, have you talked

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with about this—about Jefferson Davis High School? A. Approximately how many?

Q. Yes, sir? A. Approximately six or eight, seven—six or seven.

Q. Six or seven? A. (Nodded to indicate affirmative reply)

Q. And have all of these people you have talked with, have they been white or colored? A. That is correct; those are the ones who invited me; I speak where I am invited; yes, sir.

Q. Now, have you taken the initiative in—in—in preparation for the opening of this school, have you taken the initiative to contact anybody about anything concerning the school? A. I would—I—I don't recall specifically contacting anyone about anything; in general way, of course,

I have had conversations with many people about opening of the school.

Q. Have you contacted any Negroes at all, either principals of schools, teachers in schools, or anyone else concerning any plans or asking them for suggestions or letting them know that you would like their assistance so far as Negroes are concerned? A. The only way there is on committee work, and in the committees on which I have worked, of course, I have colleagues who are Negroes, and I have talked to them in a general way, but not specifically about Jefferson Davis; no.

Q. So you haven't talked to any Negroes at all about

Jefferson Davis? A. That is correct.

Q. Now, are you familiar with the proposed eligibility of football players at Jefferson Davis for this fall? A. Yes; I am.

Q. What rule and regulation has been adopted so far as who will be eligible? A. Those people who have established eligibility at the Lee and Lanier High School and who live closer to Jefferson Davis High School will be eligible to attend Jefferson Davis High School.

Q. Now, who passed that rule and regulation and adopted —who adopted that regulation? A. That rule was adopted jointly, I think between myself and the superintendents and Mr. Bubba Scott of the Athletic Association.

The Court: Only Lee and Lanier High School?

Witness: Well, Judge, under the court order, of course, anyone who is going from a—from one school desegregated for the first time, of course, would be eligible, so it wouldn't be any need to include other

high schools in Montgomery. If I interpret the court order correctly, sir.

The Court: Let me hear that rule again?

Witness: The eligibility rule is that if a student has established eligibility in Lee or Lanier High School, if he lives closer to Jefferson Davis High School, he would be eligible to participate in athletics.

The Court: Is that white or Negro in Lee or Lanier?

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Witness: Yes, sir; I don't think there is any distinction.

The Court: All right; go ahead. Would he be eligible to participate the first year in athletics at Jefferson Davis?

Witness: Yes, sir.

The Court: All right. What if he is from Carver or Ramer or—

Witness: I believe, under the court order, if he were in one of those schools, sir, he would be eligible, as the court order states, because he would be going into—into a desegregated situation for the first time, and he would be eligible. That is my interpretation of the court order, sir. That is why Lee and Lanier—

The Court: I think that is a proper interpretation. The court order doesn't state that, but I think that is—that is a valid interpretation of the order, that you cannot deny eligibility to—to one going to a school of the opposite race for the first year.

Witness: That is my understanding, sir.

The Court: I think that is right. But if you had Negroes at Lanier or/and Lee, I don't see why you just restrict it; that is to keep them from pirating players from—

Witness: That is correct; we have overzealous parents, of course, Judge.

The Court: I understand, I understand; go ahead.

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I think that is a proper interpretation of the order as I have given it to Mr. Scott. It is not spelled out in the order by a long shot, but I did tell Mr. Scott, and this is for the record, and I guess this is where this comes from; I told Mr. Scott they could not deny eligibility to Negroes that elected through freedom of choice to go to a former white school, even the first year. I guess that is where that rule came from; go ahead.

Q. May I show you Government's Exhibit 43-B, and you say this is the proposed—what is it? A. Crest; that goes on a class ring and so forth.

Q. Now, did you supply to the company that designed that crest the information that is contained on it? A. No; I asked them to design a crest, and their company, which is in Owatonna, Minnesota, came up with this crest.

Q. You—did you send them any information at all? A. I sent them a copy of the Confederate Seal.

Q. All right; did you also send them a copy of the Confederate flag? A. No, sir; I think there are plenty of those available throughout the country right now.

Q. Now, Jefferson Davis High School, the proposed crest has on it a Confederate Seal; is that right? A. Yes, sir.

Q. Which has, "The Confederate States of America"—
A. Right.

Q. —and above that, it has a Confederate flag? A.

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That's right.

Q. Sir, couldn't that be interpreted by Negroes as being designed to discourage them from attending that school?

Mr. Robison: If the court please, we object to the form of that question.

The Court: I sustain it.

Mr. Gray: We have no further questions.

The Court: Mr. Robison, Mr. Phelps?

Mr. Robison: Yes, sir.

Cross Examination by Mr. Robison:

Q. Mr. Rutland, you have been asked about the court order and your interpretation of that order; do you recall, in a discussion on yesterday when we were talking about this court order, having been read a portion of the existing court order— A. Yes, sir.

Q. —"A student attending school for the first time on a desegregated basis will not be subject to disqualification or waiting period for participation in activities and programs, including athletics"; do you—has that been read to you? A. Yes, sir; that was—

Q. All right, sir. Now, Mr. Rutland, what are your qualifications as a teacher or principal of this school? A. I hold a Master's degree in the school administration from the University of Alabama. I have been elementary principal

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for six years; I have been a junior high school principal for ten years; and I organized Goodwyn Junior High School ten years ago with five hundred students.

Q. You have been with this system approximately twenty years; is that your testimony? A. About nineteen years; yes, sir.

Q. And you have been a teacher and a principal in this system? A. That is correct, sir.

Q. You organized one of the junior high schools, one of the larger junior high schools in this system; is that correct, sir? A. Yes, sir.

Q. You were contacted, then, by Mr. McKee and Mr. Garrett with respect to becoming principal of the Jefferson Davis High School; is that right? A. Yes, sir; yes, sir.

Q. You have been asked regarding a clerk that you have out there, or helper that you have out there at the present time; is that person also going to be a teacher? A. Yes, sir.

Q. You have, also, a coach, two assistant coaches; is that correct, sir? A. Yes, sir.

Q. And the band leader? A. Yes, sir.

Q. Is there any other staff at Jefferson Davis H.

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School or faculty members that you know have been employed? A. That's all.

Q. Now, you have been questioned regarding—and I believe that it's Government's Exhibit—let me have that sheet of paper there, please—Government's Exhibit 38, Mr. Rutland, is that a list of teachers that you have given consideration to for employment at Jefferson Davis? A. In my own mind, sir.

Q. Do you have the final say-so, or do you have the final word, with respect to employment of teachers in your school? A. No, sir.

Q. As a matter of fact, since you have been principal at the present school, have teachers been employed and sent

there that you had no knowledge of or any dealings with prior to their assignment? A. That is correct; this has happened.

Q. On this proposed list of teachers that you have given consideration to, are there any teachers there of the colored race? A. Yes, sir.

Q. Approximately how many do you have on that list who are of the Negro race? A. Six or seven, I don't remember.

Q. And how many is the total number you have on that list? A. I do not know that.

Q. Would you mind counting them, Mr. Rutland? A.

Thirty-one, I believe, sir.

Q. Thirty-one? A. Yes.

Q. Where, Mr. Rutland, did you get those names; how did you compile that list of names? A. From word of mouth, teachers of mine who had been to observation meetings which we hold where we observe good teachers, and we send other teachers into certain schools, and my teachers have come back and told me that they saw a certain teacher doing a real fine job and that they—I put them on my list. I am looking for good teachers.

Q. That is your teachers at Goodwyn— A. Yes, sir.

Q. —is that correct, sir? A. Yes, sir.

Q. Have been to schools that are—faculty is predominantly of the opposite race and have came back and told you of such and such a teacher that is a good one— A. Yes, sir.

Q. —that is of the opposite race in instances— A. Yes, sir.

Q. —is that correct, sir? A. Yes, sir.

Q. Where they have been to those schools for teacher observation courses; is that correct, sir? A. Yes, sir; yes,

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sir; that's right.

Q. Is athletics or band a part of the curriculum of any school that you know of? A. It is extracurricular, sir.

Q. Is it a part of the required curriculum of a school? A. No, sir; it is not required.

The Court: Well, let's get on; do you consider it essential to the operation of the high school in Montgomery, Alabama, on competitive basis with Lee and Lanier?

Witness: Yes, sir.

The Court: All right.

Q. How is such activities financed? A. Activities of this kind are financed by moneys raised by citizens, civic clubs, possibly governmental agencies who make donations.

Q. Is that also true of Lee and Lanier? A. Yes, sir; that is true of all high schools, I suppose.

Q. And is that also—is it also true that basketball, football, and band is an extracurricular activity at Lee and Lanier? A. Yes, sir.

Q. Have you contacted any individual or any group, civic club, or association on your own to solicit funds or ask assistance for the financing of the extracurricular activities at Goodwyn—at Jefferson Davis High School? A. No, sir; I have not.

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Q. Have you contacted any individual with respect to setting up meetings or any civic club or group to set up

meetings to help finance it? A. No, sir; I have not contacted anyone.

Q. You have been asked about a meeting that was held at the Governor's House Motel; did you set that meeting up? A. No, sir; I did not.

Q. Do you recall or do you know who did set it up? A. Mr. Tranum Fitzpatrick, who is chairman of the steering committee of Jeff Davis High School activities committee.

Q. Did you have anything to do with the setting up of the Jefferson Davis High School activities committee; did you solicit this organization to be set up? A. Yes; I did. Ultimately, as a result of their volunteering to help me.

Q. As a result of their volunteering to help you? A. (Nodded to indicate affirmative reply)

Q. This Jefferson Davis High School activities committee was set up? A. That is correct.

Q. You were issued a subpoena duces tecum here and brought certain clippings? A. Yes, sir.

The Clerk: Defendants' Exhibit number 1, 2, Defendants' number 3, Defendants' number 4, Defendants' number 5.

Q. Did you, Mr. Rutland, make a statement here with

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respect to a nicknaming of the school? A. Yes, sir; I believe so.

Q. Do you know who wrote this article? A. No; I do not.

Q. All right. Did you grant any interview by—to a Mr. Walter Massey? A. Yes; I did.

Q. Do you recall when that interview was? A. No, sir. On January 18, 1968.

Mr. Robison: We would like to offer that in evidence.

Mr. Allen: No objection, your honor.

The Court: What number is it?

Mr. Robison: Plaintiffs'—Defendants' Exhibit number 2.

The Court: It will be admitted.

Q. Did you grant an interview to a Mr. Travis Wolfe? A. No, sir; I did not.

Q. Did you grant an interview to a Mr. Gene Diefendorf? A. Diefendorf; no, sir.

Q. Did you grant an interview to Miss Judith Helms? A. No, sir.

Mr. Robison: We are not offering those.

Q. In the interviews that you have given and the speeches that you have made, have you stated in there that this school would be opened on a freedom of choice basis? A. That is correct, sir.

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Q. Is it your understanding that your students will come there based on a freedom of choice? A. Yes, sir.

Q. You have been asked about the selection of a crest and colors and so forth of the school? A. Yes, sir.

Q. Is it necessary that the selection be made at this time and a determination be made of the crest and so forth of the school? A. No, sir; I might point out, sir, if I may, this is not an official crest of the school at this point.

Q. It is not an official crest? A. That's right.

Q. The colors that you have, have they been made official yet? A. Yes, sir.

Q. You have been asked about certain uniforms that have been ordered for both the football and the band; have they —have you got funds on hand to pay for those now, Mr. Rutland? A. I do not.

Q. The athletic equipment and the band uniforms that have been selected by you, who was with you in the making of that choice, or who determined that choice? A. Coach Bill Livings was in on the choice of the football uniform.

Q. All right, sir. A. On the band uniform, no one, sir; I did this, myself.

Q. Why did you have to select these uniforms at this

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time? A. Uniforms have to be selected at this time in order to get delivery by fall.

Q. For the football season in the fall? A. Yes, sir.

Q. You stated on direct examination that you were not a member at this time of the Alabama High School Athletic Association; is that correct, sir? A. That is correct, sir.

Q. Have you an application form for membership? A. I believe I do.

Q. Do you know what the requirement is for membership in that association? A. Yes, sir; I believe I do. I believe the requirement is that a school must be accredited by the State Department of Education.

Q. That the school must be accredited by the State Department of Education? A. Yes, sir; I believe that is true.

Q. Is the Jefferson Davis High School accredited at this time by the State Department of Education? A. On a tentative basis, I am sure, only if we meet certain standards when we open school.

Q. That was my question; when is it final; when will it be finally determined whether or not you are accredited by

the State of Alabama? A. After we have had an evaluation.

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Q. Would that be at the time you open? A. I believe at the time I open, that the State Department will give us accreditation on the basis that we have at that time met the standards and that we will agree to an evaluation and go through all the necessary steps to permanently be accredited.

Q. But you cannot adjoin—you cannot join the Alabama Athletic Association until you have been accredited by the State of Alabama; is that correct, sir? A. That is my understanding, sir.

Q. Now, the teams that you have scheduled, are they teams of the Alabama Athletic Association? A. Yes, sir.

Q. If you are not a member of the Alabama Athletic Association, can you play any teams that are members of the Alabama Athletic Association? If you do not belong to the Alabama Athletic Association, can you play any teams that are members of the Alabama—

The Court: Sure, if they are willing to play him, but if they are members and they play him, they are subject to be kicked out; that is the way I understand the rule; they can't punish him if he plays them. If he can get them to play him, all right; but the Alabama Athletic Association has a rule, if I understand it correctly, that if one member team plays a team that is not a member, then they get put out. Is that the way you understand it?

Witness: I am not firm on that, Judge; I just don't know.

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The Court: All right; don't we have the rules of the Alabama Athletic Association here?

Mr. Robison: Sir?

The Court: Don't we have the rules of the Alabama Athletic Association here?

Mr. Gray: We have a handbook here, your honor.

The Court: Don't they have that rule in them?

Mr. Gray: I am not sure; I just got it this morning.

The Court: All right; I guess Mr. Scott is here, isn't he?

Mr. Gray: Yes, sir; he is here.

The Court: All right. No member team can play a non-member team?

Mr. Phelps: If the non-member team is qualified, as I understand, to become a member.

The Court: Well, they may do that?

Mr. Robison: Yes.

Witness: That is correct there, I know.

The Court: They may do that; this is the manner in which they have exercised control.

Q. Mr. Rutland, so far as you know, are those teams that you have scheduled to play on your football schedule desegregated schools? A. Yes, sir; I assume they are, since they are schools of Alabama and since most of us, all of us, are under the—a court order of some kind.

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Q. On last year, did you see the Lanier-Tuscaloosa High School game? A. No, sir; I did not.

Q. You did not. Did you see the Lee and Tuscaloosa High game? A. I believe I did, sir; I saw so many football games, I can't remember.

Q. Do you remember that game in which at that time the football team of Tuscaloosa High was predominantly of the Negro race? A. Yes, sir.

Q. Mr. Rutland, do you understand that, as principal of the Jefferson Davis High School, that you are under a court order to take affirmative action and to encourage desegregation of the student body and the faculty? A. Yes, sir; I understand that.

Q. Will you do that to the best of your ability? A. Yes, sir; I will.

Q. Have you, in any way, attempted to influence the choice of any student in the Montgomery County system to come to your school? A. No, sir.

Mr. Robison: I believe that's all.

The Court: Redirect, Mr. Allen?

By Mr. Allen:

Q. In connection with your athletic program at Jeff Davis, you plan to have spring football practice? A. Yes; we do.

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Q. When will that start? A. March 2.

Mr. Allen: I would like to mark this as Government's Exhibit.

The Clerk: Government Exhibit number 44.

The Court: If the choice period runs from March 1 to March 31—

Mr. Allen: Yes, sir; that is correct.

The Court: —how do you start a spring practice March 2?

Witness: We are going to ask football players to commit themselves on March 1, to bring the choice sheet back to us.

The Court: How are you going to do that?

Witness: Well, we are going to ask them to bring it back, and I believe those who are interested in spring training and football—

The Court: You are going to circularize the football players at Lee and Lanier?

Witness: They will go to every student in Montgomery County.

The Court: Every student?

Witness: Yes, sir; every—choice form will go to every student in Montgomery County on March 1.

The Court: How you going to get the football players to bring them back in on the 1st of March?

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Witness: We have had this in the paper, and we will have other advertisements of this, so every child in Montgomery will have an opportunity to make his choice, and if he is eligible to play he can play.

The Court: Go ahead.

Q. I would like for you to identify Government's Exhibit 44, please, sir? A. This is a mimeographed sheet drawn up by coach Bill Livings—

The Court: What number is it?

A. —describing spring training, I believe—

The Clerk: 44.

A. —spring training at Cloverdale School.

Q. Was—who circulated this? A. That has not been circulated generally. This, I believe, has been in the paper.

Q. You mean this particular thing was printed in the paper? A. No; that—information from that particular thing, not that particular thing.

Q. Well, why was it printed up? A. I don't have any idea why we printed that up.

Q. Well, who has seen this? A. I believe this was handed out at the meeting we had at the Governor's House for the gentlemen who were helping raise money to try to get them to realize that we needed to get on with it by March 1.

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Q. And I believe you already testified that there were only white people at that meeting.

Mr. Allen: I would like to offer this in evidence as Government's Exhibit 44.

The Court: It will be admitted.

Mr. Allen: I have no further questions, your honor.

The Court: Who selected Cloverdale Community Center as being the place that the players that want to play at Jeff Davis are to report and get measured for uniforms?

Witness: I did.

Mr. Gray: Your honor, I just have a couple of questions.

By Mr. Gray:

Q. I think you said this crest is not official; is that correct? A. That's right.

Q. Is it on the band uniforms? A. No; it is not.

Q. Is it on the football uniforms? A. No; it is not.

Mr. Gray: That's all.

Recross Examination by Mr. Robison:

Q. Mr. Rutland, did you invite anyone to the meeting at the Governor's House? A. No; I did not.

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Q. Why did you select or why was the site of Cloverdale School selected as a place for this practice? A. Cloverdale people volunteered the services of their facilities and their field at this time, and it was nearby the Jefferson Davis High School.

Q. Is it in the vicinity of where your Jefferson Davis High School would be; was that the reason for it, proximity? A. It is probably the closest junior high to this field, and in the event we would have our field developed in time, we could move over easily, you see, from there. Our field is under development at this time.

Q. In the last Government's Exhibit, you require or you ask in there for both the parent and the student to exercise their selection of a choice; why did you do that? A. We did that—of course, as you know, the court order says that, I believe, a child fifteen years old may make a choice, but we did this there again to keep down any recruiting or any wish-washing and changing; we want the child to make the commitment as far as athletics is concerned so he would not have a tendency to go back to one of the other schools; if he makes his commitment with us, we feel that he ought to stay there.

Q. So you have asked both the parent and the child— A. That's right.

Q. —to exercise their choice? A. That's right; that's right; sometimes it gets tough the first two or three days,

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and they want to change; we want to make sure that once they make their choice, they stick with it.

Mr. Robison: I believe that's all.
The Court: Anything else from this witness?
Mr. Allen: No, your honor.
The Court: All right; call your next one, please.
Mr. Allen: Call Jimmy Hughes.

WALTER JAMES HUGHES, JR., witness for the United States, having been duly sworn, testified as follows:

Direct Examination by Mr. Allen:

Q. What is your occupation? A. Student at Lanier High School.

Q. Which one? A. Student at Lanier High School.

Q. Lanier? A. (Nodded to indicate affirmative reply)

Q. What grade are you in? A. Tenth.

Q. Where did you go to junior high? A. Bellingrath Junior High School.

Q. You play football, or did you play football at Lanier? A. Yes, sir.

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Q. Did you play football at Bellingrath? A. Yes, sir.

Q. Have you also played basketball at both of these schools? A. Yes, sir.

Q. In that connection, have you become acquainted with Mr. Charles Lee and Mr. Billy Livings— A. Yes, sir.

Q. —coaches? Mr. Lee is the coach at Bellingrath; is that right? A. Yes, sir.

Q. Have you had occasion to talk to either of these men about the new Jefferson Davis High School? A. I have.

Q. Would you tell us what conversations you had with coach Lee? A. I have only talked to coach Lee one time, and that was on my own accord; I went to see—visit his wife, who was in the hospital at the time she had her first child, and I asked him how things were going at the new school, and—I mean at—at Bellingrath, and I asked him what the colors were going to be for the new school, and he told me, and that was about the extent of our conversation. That is the only conversation I have had with him.

Q. How did you know that he was going to be at the new school? A. It was announced in the paper.

Q. What conversation have you had with coach Livings? A. I have had three conversations about the new school with coach Livings. The first one was very brief; I just asked him what his—what they were going to do over there

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and tried to find out some information about when spring training and when other facilities would start there, and, of course, at that time, he didn't know. It was just after he had been announced, and so he told me to ask him later if I still wanted to know or something, and I waited.

Q. Did you ask him later about spring training? A. I did; I came to him during study hall one afternoon and asked him when spring training would start, where it would be held, and he had—he told me, and then I asked him what—let's see, would we have practice on a—during A.E.A. holidays, and he stated that he didn't think so, he really didn't know.

Q. Was anyone with you when you asked him about spring training? A. No, sir; I was by myself.

Q. Have you talked to other students at Lanier about spring training or about Jeff Davis generally? A. Nothing other than between ourselves, like something as to the nature, "Are you going to Jeff Davis," and the general reply would be, "I wouldn't know"; that is about the extent of it. Nobody has talked much about it.

Q. Have you discussed this with any Negro students? A. No.

Q. In all your athletic experience at Bellingrath and at Lanier, have you ever played an opposing team from the traditionally Negro school? A. I don't think so.

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Q. At Lanier, have you ever had a sub—a Negro substitute teacher? A. No, sir.

Q. Have you ever had a Negro teacher? A. No, sir

Mr. Allen: That's all the questions I have—I beg your pardon; just a minute.

Q. Did you have an occasion to make up a play book of football plays for coach Livings? A. I had the occasion to write some plays down for coach Livings; yes. It was in study hall one afternoon, and I went down to ask him about whether—it was something concerning the school library at Lanier, and I happened to see several pieces of paper on his desk, and they had football formations on them, and I assumed he was working on them, and I asked him what they were, and he told me they were some of the formations that he thought they would use in the basic offense of the new school, and then he said, "Would you like to look at them," and I said, "Yes, sir; if you don't

mind." And he said, "That will be quite all right," and so I looked at them a few minutes, and I was looking at them, and I jotted down a few plays on each formation that I had known and had come in—you know, contact with. And I suppose I wrote down about six or eight or so for each formation.

Q. You learned these football plays when you were with coach Lee at Bellingrath? A. Most of them; yes, sir; but a few of them I did learn at Lanier.

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Mr. Allen: That's all, your honor.

Mr. Gray: No questions, your honor.

Cross Examination by Mr. Phelps:

Q. Walter, have you decided where you are going to school next year? A. I have not made a definite decision; I would like to go to Jeff Davis, but I haven't made my final decision yet.

Q. You are still considering? A. Yes, sir.

Q. Now, Mr. Allen asked you about did you have a colored teacher at Lanier; you have been interested in athletics at both Lanier and your junior high school? A. Yes, sir.

Q. Do you know a colored—any colored teachers; have you worked with any colored teachers out at Lanier? A. Yes, sir; there is coach Harris, who is P.E. teacher at Lanier; I have become acquaintance with him several times; he is a very nice person, and he works with—he doesn't work with the athletes directly, but on occasion, when some of the coaches are not able to come in and speak with us, then he will come by and keep us in—you know, our order, especially the first two or three days of

school, he was an important person, you know, in that aspect.

Q. All right; you have worked quite a bit with coach Harris? A. Well, not quite a bit, but I have come in direct contact with him.

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Q. All right. Now, have you seen any—any substitute teachers or other colored teachers out there? A. I have seen one substitute teacher or teacher who was colored, and that is the only one I can say that I have seen.

Q. Besides coach Harris? A. Yes, sir.

Q. All right. Walter, you have got a subpoena to come to court today? A. Yes, sir.

Q. When did you get that subpoena? A. Last night about nine thirty or so.

Q. Did Mr. Quaintance, who sits here, give it to you? A. Yes, sir.

Q. Where—where was it served on you? A. At—in my living room.

Q. Did you get any advance notice about that? A. No, sir.

Mr. Phelps: I believe that's all.

The Court: Anything else from this witness?

Mr. Allen: That's all, your honor.

The Court: Witness is excused. You may go, young man. He can go. Call your next one.

Mr. Allen: Mr. Charles Lee.

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CHARLES LEE, witness for the United States, having been duly sworn, testified as follows:

Direct Examination by Mr. Allen:

Q. State your name, please, sir? A. Charles Lee.

Q. What is your occupation? A. I am presently employed as teacher in physical education at Bellingrath Junior High School.

Q. At Bellingrath, you also coach? A. That is correct.

Q. Basketball? A. Basketball, football, track, all varsity sports.

Q. In your football experience, how many Negro athletes have you had? A. We have had one to come out for football.

Q. When was that? A. This past fall.

Q. Is that the only Negro athlete that you have actually worked with? A. In physical education, we have many colored athletes, colored boys.

Q. You are speaking of physical education classes then? A. As working with these boys as athletes in physical education; outside of school, only one boy has come out.

Q. Have you accepted an assignment to the Jeff Davis

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High School next year as assistant coach? A. That is correct.

Q. You are employed by the Montgomery County school system? A. That is correct.

Q. Has it been part of your duties at Bellingrath to make up—I beg your pardon; has it been part of your duties to make up a basketball schedule for the new Jeff Davis High School? A. Yes.

Q. Have you contacted authorities at other schools to make up this schedule? A. I have contacted other schools.

Q. I will show you a document marked as Government's Exhibit 42, and ask you if you will identify that, please, sir? A. This is a list of coaches, the name of the school, and the town which they are located at, which I have sent out letters to as feelers for basketball schedule.

Q. Are all those traditional white schools? A. As far as I know, all of these schools are integrated schools.

Q. Are they traditional white schools? A. I would assume that, in years past, they have been.

Mr. Allen: I would like to offer this as Government's Exhibit 42.

The Court: 42 will be admitted.

Q. Where did you obtain the names of schools to contact? A. When I first began to make up a list of names,

it was from coaches that I was acquainted with; second of all, from schools that I was familiar with as far as their athletic program is concerned, and schools which were close to Montgomery that I was familiar with, because we, being a new school, are faced with a problem of proximity, and we must try to play schools around close so that we won't have a great deal of traveling expenses.

Q. Did you have a list of schools from which you could select? A. The Alabama High School Association has a directory, and from this directory, the schools that are members of the association, each school is listed, the town in which it is located, the classification of school, the district that it is in, and the coaches on that staff.

Q. Is that the association that Bellingrath is in? A. It is actually an Alabama High School Association; junior

high schools can be a part of the High School Association, although they don't—they do not share in the overall high school set-up.

Q. Well, is it the association that the traditional white schools in Montgomery are in, Lee and Lanier? A. Lee and Lanier are in this association.

Q. Do you have any Negro teachers at Bellingrath? A. No.

Q. Have you seen any Negro substitute teachers there this year? A. I have not seen any, but I am not always in the school.

Q. Have you had occasion to discuss the Jeff Davis High

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School's athletic program with any students? A. Yes.

Q. About how many? A. It would be hard to determine, because of the many questions that have come up by different students at different times that they have asked me, primarily after the article came out in the paper several weeks ago as explaining the eligibility as to whether they would be eligible to attend or not.

Q. Now, this article in the paper explained the eligibility; is that an explanation which was given pertaining to students who are coming from Lee and Lanier schools? A. It—as well as I can remember, it explained that any ninth grade student in Montgomery County was eligible to come and be athletically eligible, and as far as high school was concerned, that they were to live closer to Jefferson Davis than they did to Lee or Lanier.

Q. Have you talked to any Negro students about the athletic program at Jeff Davis? A. I have had no Negro students to ask me of the program. I have not—in other words, they have not asked me just like the white students have, and so this is the only contact that I have had with them.

Q. Has any provision been made, to your knowledge, for furnishing this kind of information to students at Carver and Washington and the traditionally Negro junior.

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high schools? A. The information as it first came out was in the Journal.

Q. All right; then you testified that when that information came out, several white students came and asked you questions about it? A. That is correct; students at our school.

Q. Who would answer those questions for Negro students? A. Anyone that they asked, I suppose.

Q. Has any provision been made to—for you to have any contact with students at traditional schools—traditionally Negro schools? A. Would you repeat the question?

Q. Has any provision been made for you to have any contact with students at traditional Negro schools? A. There have been no provisions made for me as a coach or any other coach to contact any students at any schools.

Q. Is there any reason, that you can think of, why Jefferson Davis shouldn't play Carver and Booker Washington in athletic contests? A. I don't know that I can adequately answer that question; I might answer it by saying this; that when I, as a coach, or any coach sets out to draw up a schedule or set up a schedule for his teams, a great many things are taken into consideration—sportsmanship, closeness, and working relations with that school.

Q. Wouldn't Carver and Booker Washington fit into those categories, closeness? A. Closeness, they would. The level at which we, as a new school, are forced to com-

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pete with, we certainly, as we start out, cannot take on the larger schools. I think this would eliminate a great many

schools in the Montgomery system; we could not compete with the Montgomery public schools, any of the Montgomery public schools, because of the size of their schools and the size of our school. And then we look for it as to what would be the most beneficial for our ball team.

Mr. Allen: That's all the questions I have, your honor.

By Mr. Gray:

Q. Coach, are you familiar with Saint Jude High School? A. I think so; it is located on Fairview Avenue.

Q. Yes, sir; across the street from Carver? A. Yes.

Q. Is it a predominantly Negro or white school? A. As far as I know, it is predominantly Negro.

Q. And it is a smaller school than Carver or Booker Washington, isn't it? A. I don't have any idea about the size.

Q. Did you consider the possibility of getting a game with Saint Jude? A. No; I did not.

Q. You didn't; and I notice on your schedule, you are playing Catholic High School? A. No; this is a possible.

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Q. It is a possibility? A. Right.

Q. You—have you considered the possibility at Saint Jude—to play Saint Jude? A. No; I did not.

Q. I also see you have a possibility on your schedule of Montgomery Academy and Alabama Christian High School? A. That is correct.

Q. Did you consider Alabama State Laboratory High School? A. No; I did not.

Q. Are you familiar with Alabama State Laboratory High School? A. No; I am not.

Q. Have you done anything to familiarize yourself with any of the Negro schools in this area that your team could play? A. As I stated before, when I began to make this list up, my first consideration was for people that I knew, and, in answer to your question, no.

Q. And you don't know any Negroes who are employed in the school system and who are coaches, et cetera, do you? A. I do know some that are employed in the school system.

Q. Do you know the various junior high school coaches in Montgomery, the Montgomery school system? A. No; I do not.

Q. The white ones? A. Yes.

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Q. Do you know the Negro junior high school coaches in the system? A. No.

Q. So really, you have no knowledge at all of the Negroes in the educational field in the Montgomery area? A. Very little.

Q. And you didn't make any effort at all in working out your schedule to find out anything about these persons or these schools? A. No.

Mr. Gray: That's all.

The Court: Mr. Robison, Mr. Phelps?

Cross Examination by Mr. Robison:

Q. Do—does the same rules with respect to scheduling basketball apply as does to football insofar as scheduling teams in the Alabama Athletic Association—High School Athletic Association? A. When, several weeks ago, as I began to draw up or began to form a—this letter, one of the first things that I did was to contact Mr. Scott, who

is head of the Alabama High School Association, to ask if we would be eligible for the Alabama High School Association, and he said that if we were accredited, that we would be eligible, and it had been my understanding that we would be accredited. And so, along these lines then, I began to look at the schools in—that I knew through various contacts that the other Montgomery schools, Lee and Lanier, had had good relationships primarily in years before.

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Mr. Robison: That's all.
The Court: Anything further from this witness?
Mr. Allen: No, your honor.
The Court: You want to excuse this witness?
Mr. Gray: I just have one question.

Redirect Examination by Mr. Gray:

Q. Is it then your testimony that the reason you didn't consider Negroes is because the Negro schools were not on the list of the Alabama High School Athletic Association's directory? A. I did not; I do not know if there are any Negro schools in there, because for this reason; I assume that all of us are integrated schools, first of all, and then there are a great many schools in the directory that I did not contact.

Q. So then your basis, really, was personal knowledge and not the schools that were contained in the directory of the Alabama State Association? A. Personal knowledge is correct.

Mr. Gray: All right.
Mr. Robison: That's all.
The Court: You want to excuse this witness?

Mr. Allen: Yes, your honor.

The Court: Any reason to keep this witness?

Mr. Allen: Beg your pardon?

The Court: Any reason to keep this witness?

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Mr. Allen: No, your honor.

The Court: Call the next one, please.

Mr. Allen: That is all the witnesses we have, your honor.

The Court: The Government rests here. Any further evidence? All right; Plaintiffs.

Mr. Gray: Mr. Scott.

The Court: Let's take a ten minute recess, Mr.—.

(At which time, 2:49 p.m., a recess was had until 2:58 p.m., at which time the hearing continued.)

The Court: All right; your next witness.

Mr. Gray: Mr. Scott.

The Court: First witness for the Plaintiffs, I believe.

NOTE: For testimony of HERMAN L. SCOTT, witness for the Plaintiffs, see excerpt transcript filed February 27, 1968.

The Court: Case is with the Defendants.

Mr. Robison: We would like to call Mr. Walter McKee.

WALTER MCKEE, a Defendant, having been duly sworn, testified as follows:

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Direct Examination by Mr. Robison:

Q. Mr. McKee, you were asked earlier this morning concerning transportation to the new school; how many students are transported to Lanier? A. At the present time, there is four hundred and thirty—approximately four hundred thirty-nine transported to Lanier.

Q. How many to Carver? A. Two hundred ninety-five.

Q. How many to Lee? A. Two hundred—three fifty.

Q. And how many to Booker Washington? A. A hundred and thirty-two.

Q. How is it determined whether a school will be a transported or—school or not; how do you determine whether or not to designate a school as a transported school or not? A. Well, the big thing is, of course, where a school is most likely to have space, back in the days when they had districts, that was the sole factor, and the geographical—geography of the town is another thing that is involved. Now, as I pointed out this morning, the Lower Wetumpka Road, the Wetumpka Highway, and the Atlanta Highway are the areas, and those roads that branch off, that is transported to Booker Washington and Lee High School. Then, coming on around the Vaughn Road to Woodley Road, the McGehee Road, the Narrow Lane Road, and Norman Bridge Road, the Mobile Highway, the Selma Highway, and the Birmingham Highway, those are the

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areas in which students had a choice to go to either Lanier or Carver and will be furnished transportation.

Q. In the designation of a—of an area as transported or in the designation of transported schools, that is, schools to which they are transported, is that based on any ratio factor? A. Not other than to give the opportunity of those living out of the city a chance to ride a school bus to a school of their choice which would be of one race or the other.

Q. So in designating a transported school or a transported area, race is considered a factor so as to permit any child residing in that area, they can be transported either to a predominantly white or a predominantly colored school, depending on their choice— A. That is correct.

Q. —is that your testimony? A. That is correct. Now, I might point out that we have some fifty odd schools, and practically all of them are in town, and we only have transportation to six or eight, something like that. For instance, in the junior high field, we have transportation to about five of them.

Q. Why don't you designate all schools as a transported school? A. That would be a physical impossibility to bring your buses in, say, from the Vaughn Road or in from the Wetumpka Highway and go to three or four different junior highs or to two or three or four senior highs; that would just be a physical impossibility without the children

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having to get up real early in the morning.

Q. So you designate certain areas that buses run over to transport students to a particular school designated as a transported school, and in that area, they have a choice to go to either a predominantly white or a predominantly colored school? A. That is correct.

Q. Now, based on your study and your experience, Mr. McKee, with respect to transportation of this system, and

particularly transportation under the court order, do you have an opinion as to whether or not it would be feasibly possible to transport children to the new school? A. It would certainly not be feasibly possible to transport all of them. It would—the—it would—the space situation there, in my opinion, is going to be very crowded. And, of course, if you put the seven hundred children, roughly, that are now being transported to Carver and to Lanier, your school would be full, practically.

Q. Of transported children? A. That is correct.

Q. Well, would—is it your opinion, based on your study, that there will be sufficient students in the area of the new school so that the present capacity will be filled? A. I—I think there will. I checked on some figures on that during the lunch hour, and I found that the new school is three and seventy-five hundredths miles from Lanier High School

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as the crow flies, from the map, of course; some students will come from there. It is a little over two miles from Lee High School; and just a little bit over three miles from Booker Washington. And, of course, those schools—there would be children in the edges of the districts from all three of those that would be closer to the new high school than would—they would be to the other one.

Q. With respect to the Peter Crump School and the Southlawn, new schools, have you formulated any opinion as to the feasibility of transporting students to those schools? A. We felt that we could not transport students to that school at this time, because we had space in other schools that had been built; we did not have the funds to build rooms except for those that would be more or less in walking distance of those schools.

Q. Are the decisions which you have reached with respect to your proposal on transportation administrative decisions based on the feasibility studies that you have made and not based on a race factor? A. That is correct.

Mr. Robison: I believe that's all.
The Court: Cross.
Mr. Allen: I have no questions, your honor.

Cross Examination by Mr. Gray:

Q. I think, sir, you said that what the Board has done,

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so far as the children in the rural is concerned, is to provide transportation going to a predominantly colored school and a predominantly white school so they can make their choice? A. That is correct.

Q. Now, with respect to—back to my area around Woodley Road where these Negro children have a choice either to Hayneville Road or Goode Street? A. That is correct.

Q. Goode Street now is a predominantly Negro school, isn't it? A. That is correct.

Q. And Hayneville Road school is a predominantly Negro school? A. That is correct.

Q. So now the only transportation in that area that is available for these children now are to be predominantly Negro schools? A. Either the white children or the colored children.

Q. That is the situation, isn't it? A. I said for the white children or the colored children.

Q. So then there is no transportation available to an integrated school or to one of the predominantly other race? A. We are seriously considering that for the next year since we have space now at Harrison School on the

By-Pass, which I referred to, that we may designate that as one of the transported schools in that area, Harrison School and Hayneville Road.

Q. Isn't it a fact, Mr. McKee, all this points up the fact that what the Board really needs to do is to completely

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revamp its transportation system on a nonracial basis? A. I think it is as far as it can possibly be; any child in the county has a choice to go to any school he wants to; he has a choice to go to schools—or transportation, if he is transported, to either a predominantly white or colored school. I don't see how that could be made any fairer, and I don't know of a single child in the county that has been turned down to go to—to any of these transported schools, because I don't believe any of those are frozen.

Q. Of course, if you restrict the number of schools where transportation is available, their choice is automatically restricted, isn't it? A. It is restricted not as far as race is concerned.

Q. Well, I mean the effect of it is a restriction? A. I wouldn't—I wouldn't say as far as race is concerned.

Mr. Gray: I have no further questions.

The Court: Mr. Robison?

Redirect Examination by Mr. Robison:

Q. If you don't restrict it to certain schools or number, it would be impossible to conduct a transportation system? A. It would be impossible, because we could not run a bus —the bus coming from—from the Woodley Road could not possibly go to eight or ten different schools to leave three children here, go over here and leave four, cross over here

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and leave five, and get in all that trouble; children out the Woodley Road would be getting up at three o'clock in the morning.

Q. Mr. McKee, the white children that are living on the Woodley Road, where the choice is between Goode Street and Hayneville Road, as it now stands, if they, the white children, want bus transportation, they would be going to a school and are going to a school which is predominantly of a race other than their own; isn't that a fact? A. That is correct.

Mr. Robison: All right, sir; I have no further questions.

Mr. Allen: I have no questions, your honor.

The Court: All right.

Mr. Gray: Nothing further.

Mr. Robison: We have no further questions.

The Court: Next witness.

Mr. Robison: We would like to call Mr. Tom McGregor, reporter. Mr. McGregor. He hasn't been sworn, if the court please. And would like to also say to the court that he has been sitting here during this.

The Court: I will let him testify.

Mr. Robison: Thank you, sir. You haven't been sworn, have you, Tom?

Witness Jim McGregor: Jim.

Mr. Robison: I mean Jim.

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Witness Jim McGregor: No, sir.

The Clerk: Do you solemnly swear that the testimony you give in this cause to be the truth, the

whole truth, and nothing but the truth, so help you, God?

Witness Jim McGregor: I do.

JIM MCGREGOR, witness for the Defendants, having been duly sworn, testified as follows:

Direct Examination by Mr. Robison:

Q. State your name, please, sir? A. Jim McGregor.

Q. And by whom are you employed? A. Montgomery Advertiser.

Q. How long have you been employed? A. Three years.

Q. Did you make the first contact with Mr. McKee or the Board of Education with regard to inquiring about the new high school? A. I think I did one of the first stories that was done about the new high school, because I had—if I can explain, I would—had been covering a court case that had been in State Circuit Court concerning money that was going to be available for this new school, and I covered a School Board meeting, I think, right after the whole thing had been straightened out in State Court, and the School Board knew they were going to get the

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money for the new school, and the School Board took some action saying that the new school was definitely going to be built, and I did a story at that time.

Q. That was the State Court action with reference to the wage scale— A. Yes, sir.

Q. —requirement to be put in the contract? A. (Nodded to indicate affirmative reply)

Q. And when that cleared and the money became available, you attended a meeting; at that meeting, did you

have any conversation with Mr. McKee regarding this school and what type of school it would be? A. Yes, sir; I think I talked to him. I—I talked to him immediately after the meeting; I think I went to his office in the Board of Education.

Q. What statement did he make to you, if any, with respect to the race factor of this school or what it was designed to be? Insofar as race is concerned? A. The best I can remember, we—we talked about how many classrooms—

Mr. Gray: Your honor, we are going to object to this as self-serving.

The Court: I will permit it.

Mr. Gray: All right.

Q. What statement did he make? A. At one point in the conversation, he made it clear to me, and the best I

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remember, he specifically requested that it be made clear that this school, like all the other schools, were under the freedom of choice plan under court order.

Mr. Robison: I believe that's all.

The Court: Cross.

Mr. Allen: Can I see those newspaper—the newspaper clippings?

Cross Examination by Mr. Allen:

Q. I would like to show you a document which has been marked as Defendants' Exhibit 4, and ask you did you write that story? A. No, sir.

Q. You didn't? A. No, sir.

Q. Did you cover any of the meetings that were held by the committee organized to raise funds for the new high school? A. No, sir.

Q. You didn't. Have you talked to Mr. Jack Rutland at all about the new school? A. No, sir.

Q. Have you talked to any of the officials who will be assigned to the new school next year? A. No, sir. Except —well, just Board of Education; I have on occasion, four or five occasions, the last two or three years, I have covered Board of Education meetings and just reported

what went on in the meeting, but—

Q. How many contacts did you have with the Board of Education, please, sir? A. I would say I covered three or four meetings last fall. They usually meet about once a month, and I have covered maybe three meetings last fall. Another reporter and I at the paper sort of split it—one of us cover one time.

Q. Are these all pertaining to the new Jeff Davis High School? A. No, sir.

Q. How many contacts pertaining to that school? A. This is the only—the meeting I testified earlier about is the only one I can think it was specifically much talk was about the new Jeff Davis High School.

Q. And how many articles did you write about the new Jeff Davis High School? A. I think the one I referred to, and I don't remember the exact day I wrote it, but I think that was the only one I wrote that really pertained to the Jeff Davis High School.

Q. When did that appear? A. It was either late summer or early fall; I don't know the date; the best of my remembrance and recollection, it was.

Q. Did you put anything in that article about who would

be going to that school, what students? A. (Shook head to indicate negative reply)

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Q. You didn't? A. My only reference—and I am—and I am sure I quoted Mr. McKee—is saying that it would be freedom of choice. I made no reference to area or what area of the city they would come from or anything.

The Court: Mr. Gray?

Mr. Gray: No questions.

The Court: Mr. Robison?

Mr. Robison: We have no further questions.

The Court: All right.

Mr. Robison: Thank you, sir.

The Court: Step down.

Mr. Robison: Defendants rest, if the court please.

The Court: Case back with the Government.

Mr. Allen: No rebuttal, your honor.

The Court: All right.

Mr. Gray: No rebuttal.

The Court: How long you want to file your brief?

Mr. Allen: If we could have ten days, your honor.

The Court: All right. That will make it by the —by the 19th, February 19. Will that be enough time for you all, Mr. Robison?

Mr. Phelps: Yes, sir.

Mr. Robison: All right, sir.

The Court: I need to get an order out sufficiently prior to this next—to this freedom of choice period

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here. That should be the latest.

Mr. Allen: We would like to submit a proposed order, if that—the court would—

The Court: Yes; that will be all right. You may, also. We will recess until further order.

Court Reporter's Certificate (omitted in printing)

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(NOTE: This transcript is an excerpt transcript containing the testimony of HERMAN L. SCOTT as given in hearing in above case on February 9, 1968, and of his testimony only.)

HERMAN L. SCOTT, witness for the Plaintiffs, having been duly sworn, testified as follows:

Direct Examination by Mr. Gray:

Q. State your name, please? A. Herman L. Scott.

Q. Your occupation, Mr. Scott? A. Executive Secretary of the Alabama High School Athletic Association.

Q. How long have you held that position? A. Almost two years.

Q. Tell us, sir, what is the Alabama High School Athletic Association? A. The Alabama High School Athletic Association is an organization made up by its member schools for the purpose of regulating athletics in those schools.

Q. What connection, if any, does that association have with the State of Alabama? A. None.

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Q. Where your offices are located? A. In the State Office Building.

Q. And does the Association pay rent for those facilities? A. The State Board of Education has granted the Alabama High School Athletic Association office space since it was started and employed a fulltime secretary.

Q. Now, your secretary—

The Court: You mean the State employs the secretary?

Witness: No—excuse me; the State Department of Education.

Q. The State Department of Education supplies your association with office space? A. Yes.

Q. And supplies your association with a fulltime paid secretary? A. No.

Q. Correct me then? A. Our association pays all of its employees from its own revenue income.

Q. I thought I understood you to say something about a secretary? A. I am the Executive Secretary.

Q. And who pays you? A. The Association.

Q. Now, does the State of Alabama pay anyone else connected with your association? A. It pays no one.

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Q. Did you make a statement, sir, initially about a secretary or something that— A. If I did—

Q. —it supplied? A. If I did, it was in error.

Q. Okay. Now, what about—you said the Association consists of its member schools— A. Right.

Q. —is that correct? A. Right.

Q. What are the qualifications for membership in your association? A. That a school be accredited by the State Department of Education; that its principal make application to its Central Board of Control; and that this membership be accepted by the Central Board of Control.

Q. Now, approximately how many members have you throughout the State? Member schools? A. Three hundred and sixty-seven.

Q. And how many of those are Negro? A. None.

Q. Have there ever been any Negro schools a member of the Association? A. Not to my knowledge.

Q. How long have you been connected with the Association? A. As Executive Secretary?

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Q. Yes, sir? A. Almost two years.

Q. And in any other capacity? A. That is the only time under fulltime—in a fulltime capacity. I coached in one of the high schools in the State for fourteen years, but that is not in an official capacity with the Association.

Q. All right; now, at any time, did the Alabama High School Athletic Association have racial restrictions against Negro members? A. Not to my knowledge.

Q. Have you ever had any Negro members? A. Have we ever had any Negro members?

Q. Any Negro school members? A. Not to my knowledge.

Q. Has the Association—are Negro schools eligible for membership? A. Yes.

Q. Has the Association made known to these Negro schools that they are—that they will be considered for membership? A. It hasn't been asked.

Q. And have you volunteered this information? A. No.

Q. Has there been any discussion between your association and—strike that. Do you know whether or not there is another athletic association in the State? A. Yes.

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Q. What is the name of it? A. Alabama Interscholastic Athletic Association.

Q. And what association—is that the association for Negro schools? A. That is my understanding.

Q. Is there any working relationship existing between the Alabama High School Athletic Association and the

Alabama Interscholastic Athletic Association? A. They are both independent organizations. Up until this year, the Alabama High School Athletic Association conducted some of the officials' clinics for the Alabama Interscholastic Athletic Association.

Q. Has there been any consideration of merger between the two organizations? A. No.

Q. Do you foresee any difficulty in merging these two athletic associations? A. I see no necessity of it.

Q. Do you see any necessity for the existence of the two organizations? A. Well, each school has its own opportunity to join the association that it chooses; and in years past, those schools have chosen to join the respective associations as far as I know.

Q. Well, now, actually, Mr. Scott, in years past, isn't it a fact that the Alabama High School Athletic Association wouldn't accept Negro schools before the court order? Isn't that a fact; if one had applied, they wouldn't be accepted in membership? A. I don't know.

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Q. As—in addition to your membership, so far as schools are concerned, do you have any individual members; that is, are school principals members, and are coaches members, also? A. It is an organization made up of institutional membership.

Q. And if an institution becomes a member, does that mean the coach and the principal of that school is also a member? A. The principal is held responsible for the action of his school, but the institution maintains the membership.

Q. Well, now— A. It is not—it is not an organization of individual memberships.

Q. But, now, how is the— A. We have an auxiliary of the coaches' association, which is an auxiliary of the Alabama High School Athletic Association; it is called the Alabama High School Coaches' Association.

Q. Now, that is an auxiliary or subsidiary of the Alabama High School Athletic Association? A. Right; right.

Q. Now, tell me, do you know whether or not the State of Alabama State Department of Education provides the Alabama Interscholastic Athletic Association with office space as they do your association? A. It is my understanding that their offices are at Alabama State.

Q. Alabama State— A. College.

Q. —College? Now, how is the voting done; is each school given a vote, or just what happens? A. Each school

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has one vote.

Q. One vote; and that vote is exercised by the coach or by the principal? A. By the principal as head of the school; he may designate this power to the coach or some other faculty member.

Q. Now, is there any geographical regions of your associations—of your association? A. Geographical regions?

Q. Regions or zones or areas? A. It takes in those schools in the State of Alabama.

Q. What I am asking is whether or not the State is in turn divided into six zones? A. Various districts?

Q. All right? A. Athletic districts; eight in the State.

Q. Eight athletic districts; and what district is the Montgomery School System in? A. Third.

Q. Does your association sets up rules and regulations with respect to athletic contests in the various schools? A. That is true.

Q. What are these rules so far as eligibility is concerned? A. Our eligibility rules deal with the age of a student, his academic achievement, the number of semesters that he has been in school, and the transfer group.

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Q. What control, if any, does your association have over its members so far as playing teams who are not members of your association? A. We state in our rules that a school may not play a school that is not a member of the Association if that school is eligible for membership in the Association.

Q. And you say the only criteria for membership in the Association is that the school be accredited by the State of Alabama; is that right? A. And that its principal files application for membership.

Q. All right. So now, if we take an example of Carver High School, here in the City, that is accredited, if Lanier High School as one of your members were to play Carver High School, what action, if any, could your association take against Lanier? A. If one of our schools plays any school that is not a member of the Association, but is qualified to be a member of the Association and through their own choosing is not one, then that school may be disciplined for this action; it may be fined, it may be put on probation, it could be suspended from the Association.

Q. Now, has your association or has any of the school principals or school superintendents—

The Court: The effect of this rule, then, is that no white—that no school that is a member—that any school that is a member of your association that plays a Negro school is subject to be suspended or fined?

Witness: It has nothing to do with race, Judge, at all.

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The Court: No; but you don't have any Negro schools that belong—

Witness: No.

The Court: —so the effect of it, then, if any member school of your association plays a Negro school in the State, they are subject to be disciplined or fined?

Witness: That presently is not a member of our association if that school is eligible for membership.

The Court: You say they are eligible?

Witness: If they are eligible; yes, sir.

The Court: You say the Negro schools are eligible?

Witness: If they are accredited, they are eligible; yes, sir.

The Court: Yes; I understand.

Q. Now, correct me if I am wrong; I think you said that they must be accredited, and they must be voted on by your Central— A. Central Board accepts their application.

Q. All right; now, who is the Central Board? A. The Central Board is made up of one representative from the eight athletic districts making an eight-man Board.

Q. And actually, each one of these eight persons ultimately represents a school or is from a school? A. He represents his district, but he is from a school; yes.

Q. That's right. A. He is a school person; he is either a principal, a teacher, or a coach in the school.

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Q. Now, in deciding upon or in acting upon membership, is it more or less customary, if the school is accredited, is it more or less routine for the governing body to act favorably on an application? A. To my knowledge, we have never denied one.

Q. Never denied one? A. (Nodded to indicate affirmative reply)

Q. Now, has there been any discussion in any of your meetings with respect to accepting Negroes, Negro schools or predominantly Negro schools into membership? A. Has there been any discussion of it?

Q. Yes, sir? A. Well, I am sure that we have all discussed Negro schools since the court order came into effect, and this has been discussed from time to time.

Q. Has any action been taken? A. No action.

Q. As Executive Secretary—I think that is your title— A. Right.

Q. —have you made any recommendations to your governing body as to what action should be taken? A. We have had no cause to.

Q. You do not consider the fact that you still have two dual athletic systems in the State, there is no cause for it? A. I consider the fact that we have not had a membership

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submitted and no reason to take action.

Q. I show you, sir—

The Clerk: Plaintiffs' Exhibit number 1 for identification.

Q. I show you Plaintiffs' Exhibit 1 for identification; will you identify this for us, please? A. This is a Hand-

book of the Alabama High School Athletic Association which lists in it the constitution and bylaws of the Association.

Q. And that is the Association we have been talking about? A. Yes, sir.

Mr. Gray: We offer that in evidence as Plaintiffs' Exhibit 1.

Q. Now—

The Court: It will be admitted.

Q. —will you tell me, sir; is that document, Plaintiffs' Exhibit 1, published by the Alabama State Department of Education? A. It is listed as a publication of the Alabama State Department of Education; I cannot speak prior to my becoming Executive Secretary, but since I have been Executive Secretary, the Alabama Athletic Association has paid for that publication. It also lists in the front of it the organization for health, physical education, and recreation in the State.

The Court: The State Board pay for it, or who pays for it?

Witness: We pay, or the Alabama High School

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Athletic Association, since I have been there, Judge.

Q. But it is considered an official publication of the State Board of Education? A. That's right.

Mr. Gray: I believe that's all.

The Court: For the Government?

By Mr. Allen:

Q. Just one question; does anyone from your association actually participate in the scheduling of athletic contests between the different schools? A. That is left up entirely to the schools.

Q. That is done by the authorities at the school, itself? A. Right.

Mr. Allen: That's all.
The Court: All right.

Cross Examination by Mr. Robison:

Q. Mr. Scott, what is the purpose of your organization? A. The purpose of the Alabama High School Athletic Association is to regulate and to control athletics in its member schools.

Q. Is it comparable to the Southeastern Conference and the Atlantic Coast Conferences and other conferences that are controlled by the associations? A. This is the type organization it is. These conferences, of course, are known throughout the Nation in colleges; in high schools; various

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national organizations, such as the N.C. double A., the N.A.I.A., are in the various regions of the country, such as Southeastern Conference, such as the Atlantic Coast Conference, as the Big Ten, the Pacific Coast Conferences, and things of that nature.

Q. What—how long—what was the history for the formation of this organization? A. I guess really we might can go back many, many years ago when in athletics there was an awful lot of trouble, and I guess it goes back to the game of football, itself, which in the days of Teddy

Roosevelt and during his administration there was a congressional investigation committee formed to investigate football as it was being played in the colleges of the Nation. The reason for this was because of the old flying wedge that was being used by football teams at that time and the fact that so many people were being injured or killed with the old flying wedge, so they set up a congressional investigation committee, and as the story goes, football was about to be banned from these institutions by the Congress of the United States, and they called Knute Rockne, who was then coach at Notre Dame, to testify before the committee or to tell something about football, and in essence, what Coach Rockne told them was that there had to be some type of activity in the schools of the Nation that would give every red-blooded American boy the opportunity to go out and to compete in some type of combative sport where there was contact, that this was an innate

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desire in people to—and particularly young people—to strike back, to want to strike back, and if it was not given some avenue of escape through some type of organization, it would manifest itself in the back alleys of the cities and towns of the Nation with knives and blackjacks and brass knucks and this type—and this type thing. So the committee made the recommendation that a body be formed to draw up rules whereby that this game could be played. And in essence, this was the beginning of the N.C. double A., the National Collegiate Athletic Association, which controls the athletics in the colleges and universities of the Nation, of the land, today. And all of these other organizations had their beginnings in their regions and in their states from the same—from this same cause. In essence, the reason that the Alabama High School Athletic Asso-

ciation was formed in the State of Alabama was so that the people that were representing the schools would be true students. Years ago, they brought them out of the coal mines, they brought them from the saw mill, and they brought them off the farm.

The Court: I believe that is enough of that; let's get along.

Mr. Robison: All right, sir.

Q. What activities do you conduct or is under the sponsorship of your association with respect to coaches and so forth for the conference? A. What activities?

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Q. Yes, sir? A. We conduct the All Star football games which are played at the University of Alabama each fall. We also conduct, in connection with the University of Alabama, a coaches' clinic held at the University in the fall.

Q. Do you also conduct schools with respect to referees and officials for the games? A. We carry on an officials' training program.

Q. Is race a factor in membership in your association? A. No, sir.

Q. What—state to me again, what is the only requirement for membership in your association? A. That a school be accredited by the State Department of Education; that its principal submit an application to the Central Board of Control; and that the Board give this application due consideration.

Q. Have you ever denied any application that has been filed with your association where the student body was predominantly of the Negro race? A. To my knowledge; no.

Q. The requirement of your association, as I understand it, is that if a member school plays a school which is not a member or an application has not been filed for membership, then disciplinary action can be taken against that school? A. Only—only if this school is eligible for membership; if it is an unaccredited high school in the State, then, of course, the schools may play them at their own risk.

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Q. You were asked about the Alabama Interscholastic Athletic Association; are you familiar wth that association? A. Only that it is a comparable organization to the Alabama High School Athletic Association.

Q. Does it have the same rules and regulations, to your knowledge, with respect to member teams that the Alabama Athletic Association has? A. Basically, their rules and regulations were copied from ours.

Q. Their rules and regulations were copied from yours, basically? A. Yes, sir.

Q. So if a member of that association, that is, the Alabama Interscholastic Athletic Association, plays a school that is not a member of that association or is not eligible for membership with an application pending, then they can take disciplinary action against their member school; is that true? A. To my knowledge; that is true.

Q. You were asked if this was an official publication of the State Board of Education; I ask you, is that an official publication or an authorized publication by the State Board, and if so, what is in it—what is the difference? A. This is authorized by the State Board of Education, a publication authorized by the State Board, meaning that it is published and sent out to all of the schools in the State of Alabama which are members of the Alabama High School Athletic Association or any schools which have the organi-

zation of health, physical education, and recreation in it.

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Q. Does the State Board of Education have anything to do with the approval of these rules and regulations? A. Not to my knowledge.

The Court: Why does it take the authority of the State Board of Education to send this out; you say they authorize you to do it?

Witness: The organization of health, physical education, and recreation, Judge, is worked through the State Department of Education in the Division of Secondary Schools headed up by Dr. Blair. Mr. Charlie Stapp is in charge of that program, and athletics have always been a natural outgrowth of the physical education program in the schools.

The Court: Considered—

Witness: Physical education is a required course in the school; athletics, of course, is an extracurricular activity carrying no credit or no requirement to it, and the rules and regulations and guidelines of health, physical education is in that book along with the rules and regulations of athletics, in that athletics are a natural outgrowth of the physical education program.

The Court: All right; let's get along.

Q. Are the member schools in your association desegregated? A. Yes, sir.

Q. Do you recall the game played here in Montgomery at which time Tuscaloosa had predominantly a Negro team

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on the field playing either Lee or Lanier? A. It had six at one time out there, the best that I remember.

Mr. Robison: I believe that's all.

The Court: Mr. Allen?

Redirect Examination by Mr. Allen:

Q. You mentioned that you conduct coaches' clinics; have there ever been any Negroes at those coaches' clinics? A. Yes, sir.

Q. How many and when? A. I couldn't say exactly how many; I have been going to those clinics for seventeen—eighteen years, and to my knowledge, they have always been in attendance; some have always been there.

Mr. Allen: All right; that's all.

Mr. Gray: We have no further questions.

Mr. Robison: Like to ask you one further question.

Recross Examination by Mr. Robison:

Q. What is the purpose of the rule prohibiting a member school in your association from playing a non-member school of your association; is it race? A. No, sir; the purpose of that rule is that all schools will play by the same rules; in other words, that the age of the students will be the same, that the academic requirements will be the same, that the number of semesters spent in school will be the same, and that the transfer rule would apply

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the same way, that they all play equally as far as those students who represent them on the field are concerned according to the eligibility requirements.

The Court: Does the Interscholastic Association, the Negro association, have the same rule?

Witness: To my knowledge, they do, Judge.

The Court: All right.

Witness: Or similar rules.

The Court: All right. Anything else?

Mr. Allen: Nothing further.

The Court: Let me ask you a question or two. Have you conferred with Rutland and Livings on the eligibility of the players over there the first year for the Jeff Davis School?

Witness: Only these students, Judge, which might transfer.

The Court: Have you conferred with them on that problem?

Witness: With the County Board of Education and these principals of the Montgomery city schools.

The Court: Have you conferred with the new principal of the Jeff Davis School and the new coach at the Jeff Davis School on the eligibility of their players this first year?

Witness: For those that transfer from Lee or Lanier; yes, sir.

The Court: And what did you all determine on that?

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Witness: We set up a rule whereby that those students who are presently enrolled in Lee or Lanier could transfer to the new school provided that they live closer to the new school than they do to the school they are now attending. Ordinarily, these students would be ineligible to transfer from one school to another, that is, transfer their athletic eligibility.

The Court: And play the first year?

Witness: And play the first year.

The Court: And what did you determine as far as Negro athletes were concerned?

Witness: The court order takes precedence there in that if a student is transferring for the first time on a desegregated basis, that he is ruled eligible to participate in that school, because the Board of Education transferred him over there.

The Court: He doesn't have any waiting period; the Negro transferring doesn't have any waiting period?

Witness: This has been the ruling we have gone along with in our association.

The Court: That's right; that is set out, of course, in the court order.

Witness: That's right; that is why these other students were not considered, and only those schools —those students from Lee and Lanier.

The Court: Yes. Do you know who was instrumental in the publicity that leaves the impression

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that only athletes transferring that live close to the Jeff Davis School will be eligible to play? Here is one by Walter Massey that says that; I just wondered if you knew who was responsible for that interpretation of the rule?

Witness: No, sir; this is the first time I have seen this article, Judge.

The Court: Uh, huh.

Witness: Of course, it is general knowledge, and—

The Court: Would you say it was general knowledge that Negro athletes had a right to transfer

from publicity like that? If they didn't live near that school?

Witness: I don't know how this might be interpreted.

The Court: How do you interpret it along that line?

Witness: Well, I thought it was common knowledge that—

The Court: How do you interpret that along that line?

(Witness examined Exhibit.)

The Court: Pretty difficult to interpret, isn't it?

Witness: Well, Judge—

The Court: So as—

Witness: —in my—in my opinion, all school people know about the court order.

The Court: What we are interested in is students that may want to transfer and not school people that have studied this court order and talked with the Judges and the lawyers about it.

Witness: Yes, sir; of course, we don't have any-

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thing to do with what they publish and how it is published.

The Court: I don't guess I am concerned in this case with the zones that you all may have agreed on as far as your transferrers from Lee and Lanier, from your white schools; I wouldn't think the court would be concerned with that; that just has to do with—I understand you have established some zones?

Witness: Yes, sir; just for eligibility purposes.

The Court: That just has to do with your white athletes—

Witness: That's right.

The Court: —that are transferring?

Witness: That's right; that is why we said Lee and Lanier.

The Court: All right. That's all I want to ask him.

Mr. Gray: I have no further questions. Plaintiffs rest.

The Court: All right. You want to excuse this witness?

Mr. Robison: Yes, sir.

The Court: You are excused.

Witness: Thank you.

(End of testimony of Herman L. Scott)

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Court Reporter's Certificate (omitted in printing)

Order Granting Expedited Hearing

(Filed March 12, 1968)

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 25865

MONTGOMERY COUNTY BOARD OF EDUCATION, *et al.*,

Appellants,

—versus—

ARLAM CARR, JR., a minor, by ARLAM CARR, and JOHNNIE CARR, his parents and next friends, *et al.*,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

Before:

BROWN, *Chief Judge,* and
AINSWORTH and GODBOLD, *Circuit Judges.*

BY THE COURT:

IT IS ORDERED that the joint motion of the parties filed in the captioned cause for an expedited hearing and submission of the appeal on the original record and on typewritten briefs be hereby Granted, provided two (2) extra,

xeroxed copies of the original record are prepared after the record has been appropriately indexed, numbered and certified by the Clerk of the District Court, and are furnished by appellants for the use and convenience of the Court.

Four (4) legible xeroxed copies of the typewritten briefs prepared in the form required by this Court's Rule 26 may be filed and exchanged by all parties by not later than April 23, 1968, with appellants' xeroxed brief to be filed and served on all opposing parties by April 5, and with appellees' brief to be filed by not later than April 25. The Clerk is authorized to calendar this case for hearing at the earliest practicable date consistent with other requirements of the docket.

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District Court Clerk's Certificate of Completeness of Record, Dated March 20, 1968 (omitted in printing)

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Notice of Cross Appeal by Amicus Curiae

(Filed April 11, 1968)

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Civil Action No. 2072-N

ARLAM CARR, *et al.*,

Plaintiffs,

UNITED STATES OF AMERICA,

Amicus Curiae,

—v.—

MONTGOMERY COUNTY BOARD OF EDUCATION, *et al.*,

Defendants.

Notice is hereby given that the United States, amicus curiae herein, hereby cross-appeals to the United States Court of Appeals for the Fifth Circuit from the Orders of the United States District Court for the Middle District of Alabama, Northern Division, entered February 24, 1968 and March 2, 1968, which denied the requested relief that the faculties of all new schools in Montgomery County be fully desegregated.

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To allow sufficient time for the parties to reply prior to the argument now set for May 6, 1968, in Atlanta, Georgia, the United States will file one principal brief as appellee and cross-appellant on April 15, 1968.

FRANK D. ALLEN, JR.
Attorney
U. S. Department of Justice

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Certificate of Service (omitted in printing)

Argument and Submission

Extract from the Minutes of May 6, 1968

No. 25865

UNITED STATES OF AMERICA,

versus

MONTGOMERY COUNTY BOARD OF EDUCATION, *et al.*

On this day this cause was called, and after argument by Nathan Lewin, Attorney, Department of Justice, for appellant, and V. H. Robison, Esq., and Joseph Phelps, Esq., for appellees, was submitted to the Court.

Opinion and Judgment
Dated August 1, 1968

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 25865

MONTGOMERY COUNTY BOARD OF EDUCATION, ET AL.,

Appellants,

versus

ARLAM CARR, JR., a minor, by ARLAM CARR, and JOHNNIE CARR, his parents and next friends, ET AL.,

Appellees.

UNITED STATES OF AMERICA,

Appellant,

versus

MONTGOMERY COUNTY BOARD OF EDUCATION, ET AL.,

Appellees.

Appeals from the United States District Court for the Middle District of Alabama

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(August 1, 1968)

Before GEWIN and THORNBERRY, Circuit Judges, and ELLIOTT, District Judge.

GEWIN, Circuit Judge: The United States and appellees filed motions in the United States District Court for the Middle District of Alabama on August 17, 1967, and February 7, 1968, requesting the district court to require appellants to take further steps to eliminate the dual school system in Montgomery County, Alabama. Hearings were held on September 5, 1967 and February 9, 1968. The district court entered its order on February 24, 1968, amended March 2, 1968, granting specific relief in the areas of faculty desegregation, student teacher and substitute teacher desegregation, school construction, student transportation, and student choices regarding newly constructed schools. This appeal followed. We affirm the order of the district court as hereinafter modified.

We see no need to recite the history of the school board's efforts to comply with the constitutional mandate to desegregate its public schools. However, we note that progress has been made and that the school board has been complimented on its good faith efforts. We do not wish unduly to emphasize or de-emphasize good faith on the part of this particular board of education, but we do take note of the fact that this is the very first time it has been before this court. This case does not bear the "many service stripes" mentioned in United States v. Board of Educ. of Bessemer, 5 Cir. 1968, ____ F.2d ____ [Nos. 25809, 25810, 25811, June 3, 1968]. *See also* Davis v. Board of School Comm'rs of Mobile, 393 F.2d 690 (5 Cir. 1968).[1] In our view, good

[1] In *Davis*, the court mentioned the fact that the case involving Mobile schools had been before the Fifth Circuit five times since 1963. 393 F.2d at 691 n.1.

faith conduct on the part of any litigant in any court, especially a court of equity and, more particularly, in the sensitive area of desegregation, is a vital element for appropriate consideration. Our feeling with respect to good faith is buttressed by the recent decision of the Supreme Court in Green v. School Bd. of New Kent, ____ U.S. ____, 20 L.Ed.2d 716 (1968).[2] Some five times, during the period from 1964 to 1967, the district court publicly complimented the Montgomery County School Board on its efforts toward achieving desegregation.[3]

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[2]There is no universal answer to complex problems of desegregation; there is obviously no one plan that will do the job in every case. The matter must be assessed in *light of the circumstances present* and the options available in each instance. It is incumbent upon the school board to establish that its proposed plan promises meaningful and immediate progress toward disestablishing state-imposed segregation. It is incumbent upon the district court to weigh that claim in light of the facts at hand and in light of any alternatives which may be shown as feasible and more promising in their effectiveness. Where the court finds the board to be acting in *good faith* and the proposed plan to have real prospects for dismantling the state-imposed dual system "at the earliest practicable date," then the plan may be said to provide effective relief. Of course, where other, more promising courses of action are open to the board, they may indicate a lack of *good faith;* and at the least it places a heavy burden upon the board to explain its preference for an apparently less effective method. 20 L.Ed.2d at 724 (emphasis added).

[3]At the conclusion of a hearing on May 25, 1967, the court made the following statement from the bench:

> I would like to say this to you here in the presence of the plaintiffs and the Government lawyers; that I am impressed that the Montgomery County Superintendent of Education and members of the Montgomery County School Board of Education now evidence and have in the past evidenced a desire and intent to operate a school system here in Montgomery County as profes-

It is not necessary to discuss all of the provisions of the district court's order. Appellants challenge that portion of the order which directs them (1) to assign and transfer faculty members, student teachers, and substitute teachers throughout all schools in the system and from one school to another according to a fixed mathematical ratio based on race, and (2) to give affirmative preference to Negro students who choose to attend a newly constructed high school. That part of the court's order challenged on appeal is set forth below:

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sional educators and not as politicians. This present attitude is demonstrated here at this time; this past conduct on the part of these officials has, without any doubt, inured to the benefit of the students regardless of their race, in Montgomery County that seek quality education. And I have observed and I have been impressed that these officials have accomplished this largely through — or this has been accomplished largely through their efforts and without any serious discord or disruption as far as any school is concerned. This, when it is compared with some other similar operations is a considerable feat, for which this community, in my judgment, owes these school officials their appreciation. It evidences a pattern of professional conduct that other systems could, for the benefit of their students, emulate.

Again on September 5, 1967, at the conclusion of a hearing which apparently formed a partial basis for the order now under consideration, the court stated from the bench:

You are dealing here with a school system that you haven't had to take to your appellate courts a single time since you started. It is the only major school system in the State that you haven't had to do it on; that they have done what they have done in good faith, and they had been ahead of most of your other systems in every field.

I. FACULTY AND STAFF

A. *Statement of Objective.*

In achieving the objective of the school system, that the pattern of teacher assignments to any particular school shall not be identifiable as tailored for a heavy concentration of either Negro or white pupils in the school, the school board will be guided by the ratio of Negro to white faculty members in the school system as a whole.

The school board will accomplish faculty desegregation by hiring and assigning faculty members so that in each school the ratio of white to Negro faculty members is substantially the same as it is throughout the system. At present, the ratio is approximately 3 to 2. This will be accomplished in accordance with the schedule set out below.

B. *Schedule for Faculty Desegregation.*

1. *1968-69.* At every school with fewer than 12 teachers, the board will have at least one full-time teacher whose race is different from the race of the majority of the faculty and staff members at the school.

At every school with 12 or more teachers, the race of at least one of every six faculty and staff members will be different from the race of the majority of the faculty and staff members at the school. This Court will reserve, for

the time being, other specific faculty and staff desegregation requirements for future years.

C. *Means of Accomplishment.*

If the school board is unable to achieve faculty desegregation by inducing voluntary transfers or by filling vacancies, then it will do so by the assignment and transfer of teachers from one school to another.

D. *Substitute Teachers.*

Commencing in September, 1968, with the 1968-69 school year, the ratio of the number of days taught by white substitute teachers to the number of days taught by Negro substitute teachers at each school during each semester will be substantially the same as the ratio of white substitute teachers to Negro substitute teachers on the list of substitute teachers at the beginning of the semester.

Commencing with the 1968-69 school year, the board will not use an individual as a substitute teacher in the Montgomery Public Schools if he will consent to substitute only at predominantly white schools or only at predominantly Negro schools.

E. *Student Teachers.*

Commencing in September, 1968, with the 1968-69 school year, the ratio of white to Negro student teachers each semester in each school that uses student teachers will be substan-

tially the same as the ratio of white and Negro student teachers throughout the system.

F. *Night Schools.*

Commencing June 1, 1968, the ratio of white to Negro faculty members at each night school will be substantially the same as the ratio of white to Negro faculty members throughout the night-school program.

IV. JEFFERSON DAVIS HIGH SCHOOL, PETER CRUMP SCHOOL, AND SOUTH LAWN SCHOOL

D. *Honoring Choices.*

The school board will honor the choices of each Negro student who chooses to attend Jefferson Davis High School during the 1968-69 school year, in the absence of compelling circumstances approved by the Court on the school board's motion.

The district court denied appellees' request that the ratio of white to Negro faculty members in new schools be approximately three to two in their first year of operation. Appellees have cross-appealed on this issue.

I

ASSIGNMENT OF TEACHERS

It is clear from the record and briefs that appellants fully recognize that they have the affirmative duty to

desegregate the faculties throughout their entire school system. They have been striving to carry out this duty by seeking and encouraging voluntary transfers of teachers and by requesting new teachers to accept positions in schools where their race is in the minority. Appellants further recognize that they have the legal right to compel faculty assignment if voluntary placement is not effective.[4] However, appellants object to the district court's order requiring assignment of teachers on the ground that such is not in keeping with sound and quality school administration. We quote from appellants' brief:

> In *Beckett v. School Board of City of Norfolk, Virginia*, 269 F. Supp. 118, at page 139 (E.D. Va. May, 1967) the Court stated, in considering faculty desegregation:
>
> > However, in line with the most recent Wheeler case [Wheeler v. Durham City Board of Education, 363 F.2d 738], the School Board has not adopted

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[4]Although appellants consistently argue for voluntary assignment of teachers and staff and contend that "sound and quality school administration" favors voluntary assignment, the following statement from appellants' brief shows clearly that they recognize their obligation:

> These appellants fully recognize that they have the affirmative duty to desegregate the faculty throughout this school system to the end that "the pattern of teacher assignment to any particular school shall not be identified as tailored for a heavy concentration of either Negro or white pupils in the schools." (R.p.370 and *U.S. v. Jefferson County Board of Education*, 372 F.2d 836; aff'd en banc, 380 F.2d 385) The appellant recognizes further that they have the legal right to compel faculty assignment if voluntary placement is not effective.

> the tactic of compelling a teacher to transfer. *Moreover, such a practice would not be in accord with sound educational principles.* (Emphasis supplied)

The question of whether a school board is obligated to assign teachers to schools where their race is in the minority when efforts to persuade teachers voluntarily to accept such positions fail, has recently been before this court. United States v. Board of Educ. of Bessemer, *supra*. That opinion answers the above question with an emphatic *yes*. We quote:

> The School Boards do not meet their duty by soliciting volunteers. For the fact remains that the "responsibility for faculty desegregation, just as the responsibility of student desegregation, lies ultimately with the board, not the teachers." Davis v. Board of School Commissioners of Mobile County, 5 Cir. 1968, 393 F.2d 690. So there will be no mistake about it we spell out that *Jefferson* stands for the proposition that there is an affirmative duty on the part of the School Boards to do everything — the word is everything — within their power to meet the decree-imposed complete desegregation of faculties. It is not, it cannot be, left to the voluntariness of teacher applicants or transfers.

We therefore find no error in the court's order requiring the assignment of teachers since efforts to achieve faculty desegregation by voluntary means have failed.

II

FIXED MATHEMATICAL RATIO

Appellants strenuously object to the imposition of the mathematical ratios contained in the district court's order. They contend that such ratios are arbitrary and unwarranted in view of their extensive plans to desegregate their faculties, their showing of good faith, and the overall achievement of progress in the area. In addition, appellants submit that a fixed ratio does not take into consideration the availability of teaching personnel or the complexity of school administration, and that it ignores the goal of quality education and other similar factors which are inevitably involved in the operation of a school system.

After extensive hearings, the court below found that desegregation of faculties in the Montgomery County school system was lagging and that appellants had failed to comply with earlier orders of the court requiring full faculty desegregation. In order to remedy the lack of faculty integration, the court imposed specific targets for the school year 1968-69 and, more specifically, delineated what would be required for satisfactory compliance. Thus, under the district court's order for the school year 1968-69, most schools in Montgomery County must have roughly one-sixth of the faculty and staff of a race different from that of the other five-sixths. The school board will have achieved full compliance when the ratio of white to Negro teachers is three to two in each school. At the outset we note that

the testimony of school officials indicates a need for specific directives in the instant case.[5]

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[5]The following is an excerpt of the testimony of Associate Superintendent W. S. Garrett:

Q. As part of your duties, have you been given the responsibility, primarily, of carrying out faculty desegregation?

A. Well, the superintendent has delegated the recommending of the best faculty members that I can come by, and desegregation is a large — our faculty is a large part of my responsibilities; not the only one, but that has been discussed and — with the Board and with the superintendent, and we have a plan to accomplish this, have been working on it all year.

Q. Well, under your plan, when do you estimate that faculty desegregation will be finally accomplished in terms of the objective of the court order removing —.

A. Well, now, that is something I don't know, because I don't know what the objectives of the court order are. That has never been laid down in any percentage fashion that I know of. It says that you will have reasonable desegregation of faculty and that you will strive toward having each faculty not recognizable as being staffed for a particular race. That is what I get out of it.

Q. Well, let —

A. So I — I can't — this court order is in fairly general terms; I can't answer that question.

Q. Well, you made the statement about having schools staffed so that they will not be recognizable as for a particular race; when do you expect that that will be accomplished?

A. Well, that would depend on what the Board's definition of that is, the court's definition of that.

Q. Do you have a definition of that?

A. Not at this point; we have discussed that many times, and I do not have a definition of — of what that would mean.

Q. No one has told you, given you a definition in terms of mechanics, in terms of numbers, none of your superiors?

A. No, as far as I know, no other school personnel man

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In United States v. Jefferson County Board of Educ., 372 F.2d 836 (5 Cir. 1966), *aff'd en banc*, 380 F.2d 385 (5 Cir. 1967), *cert. denied*, 389 U.S. 840 (1967), we dealt with faculty desegregation. Following *Jefferson* the question of faculty desegregation has recently been before this court on at least three separate occasions. Stell v. Board of Educ. of Savannah, 387 F.2d 486 (5 Cir. 1967); Davis v. Board of School Comm'rs of Mobile, *supra;* and United States v. Board of Educ. of Bessemer, *supra.* We have continued to emphasize the responsibility of school boards in achieving effective faculty desegregation. We have emphasized the desirability of their doing so because of their expertise in the field of education. Nevertheless, we have made it clear that it is the duty of district courts to require specific target dates and accomplishments in order to ensure full compliance with all deliberate speed. Moreover, it is clear from recent decisions of the Supreme Court that the type of plan under which school boards should operate is a plan which works. Green v. County Bd. of New Kent, *supra;* Monroe v. Board of Comm'rs of Jackson, ____ U.S. ____, 20 L.Ed. 2d 733 (1968); Raney v. Board of Educ. of Gould, ____ U.S. ____, 20 L.Ed.2d 727 (1968).[6]

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in America has. I have talked to many of them. What we are striving to do is to make progress and keep going and hope that somewhere along the line we will have achieved the — what the court has in mind. But if you will look at that court order, you will see it doesn't lay down the precise terms exactly what that means; it is a broad definition.

[6] In both *Green* and *Monroe* faculty integration was an issue before the district courts and the courts of appeals. The Supreme Court made no pronouncement with respect to faculty integration but apparently left that decision to the district courts

Immediately following the *Brown* decisions,[7] emphasis was placed on the desegregation of schools from the point of view of the students. Faculty and staff desegregation are more recent. While it is obvious that we cannot tolerate the delay which has been experienced with respect to the desegregation of students, the decisions, in dealing with faculty and staff, have indicated "the likelihood of some lessons being learned from experimentation."[8] In the case *sub judice*, the district court concluded that Montgomery County had not fully complied with its orders to effectuate desegregation of faculty, that the plan under which the school board had sought to integrate the faculty was

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involved under the remand orders of the Courts of Appeals in the two cases. The following is from the *Green* decision:

> The Court of Appeals for the Fourth Circuit, en banc, 382 F.2d 326, 338, affirmed the District Court's approval of the "freedom-of-choice" provisions of the plan but remanded the case to the District Court for entry of an order regarding faculty "which is much more specific and more comprehensive" and which would incorporate in addition to a "minimal, objective time table" some of the faculty provisions of the decree entered by the Court of Appeals for the Fifth Circuit in United States v. Jefferson County Board of Education, 372 F.2d 836, aff'd en banc, 380 F.2d 385 (1967).

20 L.Ed. at 722.

In *Monroe* the Supreme Court stated:

> The Court of Appeals for the Sixth Circuit affirmed except on an issue of faculty desegregation, as to which the case was remanded for further proceedings.

20 L.Ed.2d at 738.

In *Raney* the Court stated: "Faculties and staff were and are segregated." 20 L.Ed.2d at 730. Faculty segregation or integration is not mentioned further in the opinion.

[7] Brown v. Board of Educ. of Topeka, 347 U.S. 483 (1954), and Brown v. Board of Educ. of Topeka, 349 U.S. 294 (1955).

[8] *See* United States v. Board of Educ. of Bessemer, *supra*; United States v. Jefferson County Bd. of Educ., *supra* at 894.

not adequate, and, therefore, that another more specific plan was necessary.

It is our conclusion that the standards fixed by courts with respect to faculty desegregation cannot be totally inflexible. In none of the three recent cases cited above, *Stell, Davis,* and *Bessemer,* has this court required faculty integration according to a numerical or racial percentage ratio. On the contrary, we have declined "to enhance Jefferson's demands."[9] We do not intimate that there must always be a slavish and unswerving adherence to the precise requirements of *Jefferson,* but generally we have avidly embraced the idea of circuit-wide uniformity and have declined "to tinker with the model decree."[10] As a matter of fact, after the decision of the district court in this case, we have actually rejected the idea of requiring mathematical or racial percentage ratios in dealing with faculty and staff. We quote from the *Bessemer* decision:

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[9] *See* United States v. Board of Educ. of Bessemer, *supra.*

[10] As we pointed out in United States v. Board of Educ. of Bessemer, *supra:*

> We must steel ourselves against the importunities to import inequality by judicial modifications to meet some supposed need of a locality. One immediate consequence of such a practice would be to encourage others to try their hand. And soon we'd be back in the school business again — a role for which we are not equipped or competent to handle. The efforts to reduce the demands of *Jefferson* we've resisted so far. *See, e.g., Barnhardt v. Meridian Municipal Separate School Dist.,* 5 Cir. 1968, _____ F.2d _____ [No. 25083, April 24, 1968]; *Gaines v. Dougherty County Board of Education,* 5 Cir. 1968, _____ F.2d _____ [No. 25776, March 14, 1968]; *Stell v. Board of Public Education for the City of Savannah,* 5 Cir. 1967, 387 F.2d 486 [No. 23724, December 4, 1967].

> We are requested to do both too much and too little. The school boards with a sincerity of counsel we do not question, urge us, in effect, to do nothing specific either in terms of target dates or racial percentage ratios, or both. The government, on the other hand, proposes that we direct the entry of a proposed sweeping, detailed decree which it frankly acknowledges adds to and extends *Jefferson*. We think neither alternative is wise.

We stated further:

> Even though *Jefferson* was more equivocal on faculty integration and expressed the likelihood of some lessons to be learned from experimentation, we think we should apply an even hand to deny requests to enhance *Jefferson's* demands.

The decree under review states that schools with twelve or more faculty members must begin the school year 1968-69 with at least one of every six faculty and staff members being of a different race from the majority. Because of the difficulties inherent in achieving a precise five-to-one ratio, this part of the district court's order should be interpreted to mean *substantially* or *approximately* five to one. The decree is modified to this extent in order to allow a degree of flexibility in the application of the 1968-69 interim requirements.

Additionally, whether the school board is in full compliance should not be decided solely by whether it has achieved the requisite numerical ratios.[11] The assignment of faculty and other staff to particular schools need not mirror the total faculty of the entire system as related to race or color. There must be a good faith and effective beginning and a good faith and effective effort to achieve faculty and staff desegregation for the entire system. Although a ratio of substantially or approximately five to one is a good beginning, we cannot say that a ratio of substantially three to two, simply because it mirrors the racial balance of the entire faculty, must be achieved as a final objective.[12] Consideration must be given to the avail-

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[11]Various district courts have entered orders that contain specific standards and at least one appellate court has approved such an order. Coppedge v. Franklin County Bd. of Educ., 273 F. Supp. 289 (E.D.N.C. 1967); Kier v. County School Bd. of Augusta, 249 F. Supp. 239 (W.D.Va. 1966); Board of Educ. of Oklahoma City v. Dowell, 375 F.2d 158 (10 Cir. 1967). Also, though the Eighth Circuit refrained from imposing an exact formula in Kelley v. Altheimer, 378 F.2d 483 (1967), it specifically called the district court's attention to percentage formulas set by other district courts.

[12]After the decision in Kelley v. Altheimer, *supra* note 11, the Eighth Circuit decided the case of Yarbrough v. Hulbert-West Memphis School Dist., 380 F.2d 962 (8 Cir. 1967). In *Yarbrough* that circuit rejected the idea of a mathematical formula and a fixed timetable and placed this interpretation upon its prior decision in *Altheimer:*

> We say in passing that this panel does not regard *Altheimer* as imposing any rigid mathematical formula which, in certain situations, could itself be arbitrary and without educational significance. We regard that case as one requiring a reluctant school board to get on with its task of achieving faculty and staff desegregation and assignment to comport with equitable and constitutional requirements divorced from racial con-

ability of teaching personnel, sound school administrative procedure, and other important factors. Consequently, under the facts and in the circumstances of this case, the order will be modified accordingly and the numerical ratios set forth in the district court's order and decree will be eliminated. This modification does not affect the five-to-one interim ratio for the school year 1968-69 as hereinabove modified.

Nothing we say in this opinion shall be construed to mean that we authorize, permit, approve or condone the consideration of race or color as a factor in the employment, assignment, reassignment, promotion, demotion or dismissal of full-time teachers, substitute teachers, student teachers or other professional staff members except to the extent that the same may be taken into account for the purpose of counteracting or correcting the effects of racial segregation in any dual school system. Any conduct by any school board which is based on racial discrimination is unauthorized, disapproved and will not be tolerated. It is hoped and believed that experience will teach effective ways and means of achieving an ideal racial balance. School boards must not use excuses to delay the achievement of full faculty and staff desegregation. They have the responsibility and should exercise the ingenuity to achieve a proper racial balance. We have repeatedly asserted that school boards are better equipped to achieve these aims than are the courts; but, if they

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siderations. Numbers and percentages per se are not the ultimate answer but, up to a point, they touch upon realities. This, we think, is the significance of *Altheimer*.

fail or refuse to act, they should now fully realize that the courts will require action.

III

JEFFERSON DAVIS HIGH SCHOOL

From the evidence presented the district court found that the newly constructed Jefferson Davis High School, scheduled to commence operations by the 1968 school year, further perpetuated the dual school system. More specifically, the court found that the location of the school in a substantially all-white neighborhood, the enrollment capacity of the school, the publicity surrounding the recruitment of white personnel, and the scheduling of athletic events established the new high school, from its very inception, as a "white" school. Indeed, the court found that the conduct of the school board relating to the new high school was "most aggravating." In order to combat the actions of school authorities and to eradicate the impression that the new air-conditioned Jefferson Davis High School was to be an exclusively white school, the district court decreed that the school board will honor the choice of each Negro student who chooses to attend Jefferson High during the 1968-69 school year.

Appellants contend that requiring affirmative racial preference to be given to Negro students for attendance in the Jefferson Davis High School is unwarranted. They submit that the school board did not plan the new high school exclusively for white children. They state in their brief that the school board's current plans call for the employment of seven Negro

teachers in the school. Further, they point to the fact that the school will open on a "freedom of choice" basis. To date 150 Negro students have chosen to attend the high school which has a capacity of 967 students. Appellants state to the court in their brief that these Negro choices will be honored in accordance with the provisions of the school board's plan.

We have examined the record and conclude that the findings of the district court that various actions on the part of appellants created the impression that the Jefferson Davis High School was intended to serve a predominately white student body is supported by some evidence. We conclude that the district court's decree was designed to overcome the impact of the school board's discriminatory conduct as found to exist by the court. The decree requires the school board to honor the choice of each Negro student "in the absence of compelling circumstances approved by the court on the School Board's motion." We cannot be certain as to the court's intended meaning of the term "compelling circumstances." We interpret the term to embrace those reasons which are inherent in and are supported by proper standards of sound school administrative procedure, giving due consideration to all factors and circumstances which are proper to be considered in passing upon such choices.

IV

FACULTY RATIOS IN NEWLY CONSTRUCTED SCHOOLS

Appellees contend that the district court committed

error in not requiring immediate compliance with the three-to-two ratio in schools which will commence operation in 1968. They submit that there would be fewer administrative problems if complete faculty desegregation were achieved at the inception of a new school. However, in the court's order of March 2, 1968, it spoke approvingly of permitting the school board to achieve the ultimate objective of a completely desegregated school system *gradually.* The court stated that gradualism had been found to work quite successfully in the past and that gradualism was contemplated by the court in accomplishing the ultimate objective. We cannot say that the court's decision to refrain from requiring full faculty integration in new schools is erroneous.

The order of the district court is affirmed as herein modified. The Clerk is directed to issue the mandate forthwith.

AFFIRMED AS MODIFIED.

THORNBERRY, Circuit Judge, concurs except as to the modifications of numerical ratios and reserves the right to dissent as to such modifications at a later date.

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JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Alabama, and was argued by counsel;

On Consideration Whereof, It is now here ordered and adjudged by this Court that the order of the District Court appealed from is modified, in accordance with the opinion of this Court, and as modified, said order be, and the same is hereby, affirmed. The Clerk is directed to issue the mandate forthwith;

It is further ordered and adjudged that the appellants, Montgomery County Board of Education, and others, be condemned to pay two-thirds of the costs in this Court, and appellees, United States of America, and others, be condemned to pay one-third of said costs for all of which execution may be issued out of the said District Court.

August 1, 1968

Thornberry, Circuit Judge, concurs except as to the modifications of numerical ratios and reserves the right to dissent as to such modifications at a later date.

Issued as Mandate: Aug 1 1968

—725-792—

Petition's for Rehearing En Banc (omitted in printing)

Dissenting Opinion of Thornberry, C.J.,
Dated October 21, 1968

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 25865

MONTGOMERY COUNTY BOARD OF EDUCATION, ET AL,

Appellants,

versus

ARLAM CARR, JR., a minor, by ARLAM CARR, and JOHNNIE CARR, his parents and next friends, ET AL,

Appellees.

UNITED STATES OF AMERICA,

Appellant,

versus

MONTGOMERY COUNTY BOARD OF EDUCATION, ET AL,

Appellees.

Appeals from the United States District Court for the Middle District of Alabama

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(October 21, 1968)

Before GEWIN and THORNBERRY, Circuit Judges, and ELLIOTT, District Judge.

THORNBERRY, Circuit Judge, dissenting:

The imposition of a specific ratio for each school as the ultimate objective of faculty integration is a new step for this Circuit, but it represents the considered judgment of a district judge who was familiar with the Montgomery schools, had heard testimony, and was making an honest effort to advance the conversion to a unitary racially nondiscriminatory system as required by the Constitution. Having found the objections to this part of the decree rather unpersuasive,[1] I would affirm the district court. To the extent that the majority have entered modifications, I respectfully and in all deference dissent.

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[1] The school board acknowledges that it must desegregate faculty so that no school is identifiable as being tailored for a heavy concentration of Negro or white students, but says that specific ratios are not required by the cases and would be achieved at the cost of quality education. Also, it is predicted that there will be a general exodus of teachers to other parts of the state. The latter point seems to assume that which is not the case, namely, that school boards in other parts of the state are not obligated to integrate the faculty of each school. As I try to show by this dissent, nothing in the cases precludes numerical ratios. Indeed, the cases require district courts to devise specific provisions to implement the general requirements of *Jefferson*. The final argument that quality education will be sacrificed seems to be based more on speculation than evidence. I would point out that the district court's order requires by way of a final objective that the ratio of white to Negro teachers in each school be "substantially the same as it is throughout the system." Once the job has been largely accomplished, i.e., once the three-to-two ratio has been approached in each school, I think the language of the decree leaves room for flexibility based on administrative necessity.

In *Jefferson County*, this Court stated the importance of faculty integration as forcefully as our language permits:

> Yet until school authorities recognize and carry out their affirmative duty to integrate faculties as well as facilities, there is not the slightest possibility of their ever establishing an operative nondiscriminatory school system.

372 F.2d at 892. The general obligations of local boards were articulated, but the formulation of more specific provisions, *i.e.*, provisions that would ultimately get the job done, was left to the boards and district courts:

> It is essential that school officials (1) cease practicing racial discrimination in the hiring and assignment of new faculty members and (2) take affirmative programmatic steps to correct existing effects of past racial assignment. *If these two requirements are prescribed, the district court should be able to add specifics to meet the particular situation the case presents.* (Emphasis added)

372 F.2d at 893. In this case, the district judge saw in the record a lack of progress in the crucial area of faculty integration[2] and a need for specific directions. His solution was to set a three-to-two ratio as the ultimate objective for each school, and I see no basis in the record or the cases for modifying his determination. To be sure, he was experimenting, but I believe

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[2]The latest figures indicate that 39 of 1,365 teachers in the system are teaching in schools of the opposite race.

this to be experimentation within the spirit of *Jefferson County*.

I do not regard *United States v. Board of Education of Bessemer* as good authority for eliminating the numerical ratios. While language in that opinion suggests the Court was not disposed to deviate in either direction from the *Jefferson* decree, it must be remembered that the district judge had not directed the board to go beyond the stage of allowing voluntary transfers of teachers willing to teach in schools of the opposite race. Being unfamiliar with the school system and having before it a record over a year old, the appellate court could do no more than impose the *Jefferson* decree with emphasis on the point that the school board must reassign teachers if the desired results are not achieved through voluntary transfers. Unlike a district judge who has detailed first-hand knowledge of schools and school officials in his area, our Court simply is not equipped at this time to determine specific objectives. Where a district Judge has formulated specific provisions on the basis of a record, it is contrary to our decisions to eliminate them in favor of more general provisions. As stated by this Court in a civil rights case of another kind, a district court "has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future." *Pullum v. Greene*, 5th Cir. 1968, ____ F.2d ____ [No. 25389, June 18, 1968], quoting from *Louisiana v. United States*, 380 U.S. 145 at 154, 85 S.Ct. 817 at 822.

Opinion on Petitions for Rehearing En Banc
Dated November 1, 1968

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 25865

MONTGOMERY COUNTY BOARD OF EDUCATION, ET AL,

Appellants,

versus

ARLAM CARR, JR., a minor, by ARLAM CARR, and JOHNNIE CARR, his parents and next friends, ET AL,

Appellees.

UNITED STATES OF AMERICA,

Appellant,

versus

MONTGOMERY COUNTY BOARD OF EDUCATION, ET AL,

Appellees.

Appeals from the United States District Court for the Middle District of Alabama.

ON PETITIONS FOR REHEARING EN BANC

(November 1, 1968)

Before GEWIN and THORNBERRY, Circuit Judges, and ELLIOTT, District Judge.

PER CURIAM: The Petitions for Rehearing are DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it, (Rule 35 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the Petitions for Rehearing En Banc are also DENIED.

Before BROWN, Chief Judge, WISDOM, GEWIN, BELL, THORNBERRY, COLEMAN, GOLDBERG, AINSWORTH, GODBOLD, DYER, SIMPSON, CLAYTON* and MORGAN, Circuit Judges

BROWN, Chief Judge, with whom WISDOM, THORNBERRY, GOLDBERG, and SIMPSON, Circuit Judges join, dissenting:

I dissent from the denial of the rehearing en banc.

In pursuing the ideal of Circuit-wide uniformity which is enhanced by tinkering as little as possible "with the model decree" of *Jefferson I* and *II*[1] as was

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*Judge Clayton did not participate in the vote on rehearing en banc due to illness.

[1]United States v. Jefferson County Board of Educ., 5 Cir., 1966, 372 F.2d 836 (Jefferson I) *aff'd en banc*, 5 Cir., 1967, 380 F.2d 385 (Jefferson II), *cert. denied sub nom.*, Caddo Parish School Bd. v. United States, 1967, 389 U.S. 840, —— S.Ct. ——, —— L.Ed.2d ——.

so recently reiterated in *Bessemer*,[2] the panel decision mistakenly concludes that *Bessemer* holds that *Jefferson* and the model decree forbid the District Judge from fixing numerical-percentage ratios of teacher integration. The mistake is unfortunate because in the name of uniformity it begets disparity, not just Circuit-wide, but within the single state of Alabama.

Certainly *Jefferson* lays no such restraint on the District Judges who are on the firing line — just the opposite was declared. "We anticipate that when district courts and this Court have gained more experience with faculty integration, the Court will be able to set forth standards more specifically than they are set forth in the decrees in the instant cases. * * * [T]he district court should be able to add specifics to meet the particular situation the case presents." Jefferson I, 372 F.2d at 893-94.

Any such prohibition would be out of character with the dominant theme so simply expressed and which has now both weathered the storm of certiorari and enjoys the judicial compliment of acceptance. For we there declared, "The only school desegregation plan that meets constitutional standards is one that works." Jefferson I, 372 F.2d at 847.[3]

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[2]United States v. Board of Educ. of Bessemer, 5 Cir., 1968, ——— F.2d ———, [No. 25809, June 3, 1968].

[3]Different only in phrasing was this statement:

> "As the Constitution dictates, the proof of the pudding is in the eating: the proof of a school board's compliance with constitutional standards is the result—the performance. Has the operation of the promised plan actually eliminated segregated and token-desegregated schools and achieved substantial integration?" 372 F.2d at 894.

And in May 1968 — two months before *Carr* — that is exactly what the Supreme Court said in *Green*:[4] "The burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work *now*." ___ U.S. at ___, 88 S.Ct. at ___, 20 L.Ed.2d at 724.

Unfortunately, if not tragically, the panel's decision recognizes that the School Board's indefinite plan *will not work*. "At the outset we note that the testimony of school officials indicates a need for specific directives in the instant case."[5] As corroboration of this candid confession the Court then footnotes (n. 5) extensive testimony of a responsible member of the school board. Superintendent Garrett explicitly states that he does not even know what the objectives of the earlier District Court order are, when faculty desegregation will be complete, and that he and the Board have been unable to arrive at a workable definition of the model decree's standard of a "faculty not recognizable as being staffed for a particular race."

Specifics are needed. Specifics are needed by the school administrators. Specifics are needed by the Negroes who have waited these 14 years for "a bona fide unitary system where schools are not white schools or Negro schools — just schools"[6] — and who must now wait for an undefined time for the tell-tale mark

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[4]Green v. County School Bd. of New Kent County, Va., May 27, 1968, ___ U.S. ___, 88 S.Ct. 1689, 20 L.Ed.2d 727.

[5]Montgomery Bd. of Educ. v. Carr, 5 Cir., 1968, ___F.2d___, ___ [No. 25865, August 1, 1968, slip opinion at 10-11].

[6]Jefferson I, *supra*, 372 F.2d at 890.

of segregated faculties to pass away. Specifics are needed by children, Negro and white alike, who are entitled to witness, feel, and participate in the continuing lesson of a constitutional order that is color free.

Specifics — imperatively needed — are not forbidden by *Bessemer*.

The language the Court there used[7] was geared very carefully to that case. The decree proposed by the Government had never been submitted to the District Judge. It was a decree for us as a Court of Appeals to enter as a binding mandate on the District Judge. Worse, it was a decree constructed on assumed racial statistics and ratios for application over a period of three years in no way covered or substantiated by a record which was then over a year old and stale, if not silent, on what had been happening.

But it is a mistake to think that this was an acquiescence in the Board's suggestion that it all be left as it had been in the past — and now seems to be left for Montgomery — to the good faith efforts of the school board.

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[7] "We are requested to do both too much and too little. The school boards * * * urge us, in effect, to do nothing specific either in terms of target dates or racial percentage ratios, or both. The government, on the other hand, proposes that we direct the entry of a proposed sweeping, detailed decree which it frankly acknowledges, adds to and extends *Jefferson*." Bessemer, *supra*, ——F.2d at —— [No. 25809, June 3, 1968, slip opinion at 11].

But we did do four things. The first was to rule out the voluntary approach. The second was to fix an immediate target date, for the School Board to report specifically what it had done and would do for the school year 1968-69. The third was to fix the date — implicit in *Jefferson* — for full compliance, as the beginning of the school year 1970-71. Fourth, we declared that since Negroes were not to be required to wait until "C-day" — 1970-71, to see the evidence of compliance, we sounded in the plainest of words that *specifics* were now the order of the day. Specifics in June-August for the school year 1968-69. More so, specifics for the succeeding year 1969-70, leading to the climax of September 1970.[8]

Loath as Judges are to articulate constitutional goals or actions in the oft-disparaged mechanical terms of arithmetic, this is an area where it is not the spirit, but the bodies which count. Any less inevitably leaves performance to good faith. Good faith is, of course, needed. But good faith is not, and cannot be, the standard. Now, and each term, each school year it comes down to figures. The result is in figures. If the result is satisfactory it is because of numbers, not

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[8] "This leaves the problem of the ultimate 'C Day.' We think it entirely consistent with *Jefferson* to say that full compliance should be reached by the opening of the school year 1970-71. But since that is just two school years away and neither the Court nor the Negro plaintiffs should have to run the risk of an announced failure on the eve of school opening in 1970-71 it is perfectly evident that the District Judge in the forthcoming June-August proceedings must exact or impose specific targets. That will be repeated, only more so, as time marches on into 1969, then into 1969-1970." Bessemer, *supra*, ——F.2d at —— [No. 25809, June 3, 1968, slip opinion at 16].

the effort or subjective motivation. If the result is unsatisfactory it is likewise because of numbers. The numbers — i.e. the numerical percentage ratios — need to be fixed. Once fixed, the Court can always determine whether a good faith effort of compliance has been made. But good faith there is relevant to compliance, not as an element in fixing the standard.

The statistics in this record are abundant and graphic. Without passing judgment on motives or performance the figures of February 1968 either undisputed or found by the Court show that integration of the student body under the freedom of choice plan has been slight.[9] Faculty integration reveals a similar lack of numerical progress much of which, the District Judge expressly finds, is a result for which the Board must bear the full responsibility.[10]

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[9]The District Court found that of 25,000 white children and 15,000 Negro children, there were approximately 550 Negro children attending traditionally white schools. No white children were attending traditionally Negro schools. These facts, as to which there is no substantial contradiction, as well as the facts and quotations in n.10 are from the Memorandum Opinion of the United States District Court for the Middle District of Alabama, filed February 24, 1968.

[10]The teacher force comprised approximately 550 Negro teachers and 815 white teachers. Only 32 classroom teachers in the system were teaching pupils in schools that were predominantly of the opposite race. "Practically all the faculty desegregation in the system has occurred in the high schools. While there is some faculty desegregation in the elementary schools in the system, it is extremely small. There has been very little, if any, faculty desegregation in the schools located outside the City on Montgomery." Of the 26 white teachers hired since September 1967, only 6 or 7 have been placed in predominantly Negro schools. All six Negro teachers hired since that date were assigned to predominantly Negro schools. "The evidence further reflects that the defendants have failed to take any appropriate

After extensive hearings, the District Court, dissatisfied with this lack of demonstrable accomplishment, imposed specific targets for the school year 1968-69 and more specifically, delineated what would be required for satisfactory compliance in order to achieve full faculty integration. The system-wide ratio of white to Negro faculty members is approximately 3 to 2. To attain schools unidentifiable as to race the Judge laid down the standard of a system-wide faculty ratio of 3 to 2. For the school year 1968-69 the Court set an interim compliance ratio of 5 to 1. In addition, the District Court imposed for the 1968-69 school year, the system-wide 3 to 2 faculty ratio for use in assigning substitute teachers, student teachers, and night school faculty members (using the night school faculty ratio).

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steps to insure that substitute teachers are placed on a nonracial basis. No Negro has yet been a substitute teacher in a traditionally white school in Montgomery County." During the 1967-68 school year, white substitute teachers were employed over 2,000 times—only 33 of them in traditionally Negro schools. "Defendants have adopted no adequate program for the assignment of student teachers on a desegregated basis. None of the approximately 150 students teachers used in the Montgomery County School System in the fall of 1967 were assigned to schools predominantly of the opposite race. Four Negro student teachers have very recently been assigned to predominantly white schools. There has been no faculty desegregation in the night schools, operated by the Montgomery County School System." Moreover, on findings, not here challenged, the record failed to show any excuse for this lack of tangible accomplishment. "The evidence does not reflect any real administrative problems involved in immediately desegregating the substitute teachers, the student teachers, the night school faculties, and in the evolvement of a really legally adequate program for the substantial desegregation of the faculties of all schools in the system commencing with the school year of 1968-69." See n. 9 *supra*.

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But much of this was, I fear, undone by the panel. Recognizing in so many words the necessity for "specific directives in the instant case" the Court's opinion does not afford that guidance and, worse, makes drastic alterations in the Trial Judge's record-based, carefully constructed program. Although the change in the formulation of the 1968-69 ratio of 5 to 1[11] may be slight in operative effect it does not stand alone. Completely eliminated is the 1968-69 ratio of 3 to 2 for substitute, student, and night school teachers. More significant is the complete elimination of the 3 to 2 ratio as the *Jefferson* goal of a school "unidentifiable as to race." Indeed, it is rejected for all time under the vague notions[12] which permit subjective discrimination of the kind so characteristic of the regional glacial movement toward integration. Right along with this is the failure, either on original disposition or now in response to an express request n the motion for rehearing, that full compliance be required by the opening of the school year 1970-71 as fixed by "C day" in *Bessemer*.

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[11] "Because of the difficulties inherent in achieving a precise five-to-one ratio, this part of the district court's order should be interpreted to mean *substantially* or *approximately* five to one. The decree is modified to this extent in order to allow a degree of flexibility in the application of the 1968-69 interim requirements." Carr, *supra*, ——F.2d at —— [No. 25865, August 1, 1968, slip opinion at 15).

[12] "Although a ratio of substantially or approximately five to one is a good beginning, we cannot say that a ratio of substantially three to two, simply because it mirrors the racial balance of the entire faculty, must be achieved as a final objective. Consideration must be given to the availability of teaching personnel, sound school administrative procedure, and other important factors." Carr, *supra*, ——F.2d at —— [No. 25865, August 8, 1968, slip opinion at 16-17].

Within scarcely 90 miles that separates the Birmingham area from Montgomery there are two separate standards and, perhaps, two separate hopes.

We owe both to those to be commanded by, and those who enjoy the benefit of, court direction, an obligation to speak with a single voice. Whatever might be the ultimate views on the merits, law and all suffer when the Court, from "an inability to muster a majority,"[13] cannot make up its institutional mind.

DYER, Circuit Judge:

I join in dissenting to the denial of a rehearing en banc.

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[13]Carter v. United States, 5 Cir., 1963, 325 F.2d 697, 707 (en banc) (dissenting opinion), *cert. denied*, 1964, 377 U.S. 946, ——S.Ct. ——, 12 L.Ed. 2d 308.

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Clerk's Certification as to Record, Dated November 25, 1968 (omitted in printing)

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Order Granting Certiorari

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1968

UNITED STATES OF AMERICA,

Petitioner,

v.

MONTGOMERY COUNTY BOARD OF EDUCATION, et al.

and

ARLAM CARR, JR., et al.,

Petitioners,

v.

MONTGOMERY COUNTY BOARD OF EDUCATION, et al.

The petitions for writs of certiorari are granted. The cases are consolidated and a total of two hours is allotted for oral argument.

March 3, 1969